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Federal Communications Commission
Washington, D.C. 20554

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In the Matters of:	)	
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Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

THIRD REPORT AND ORDER in CC Docket No. 97-21
FOURTH ORDER ON RECONSIDERATION in CC Docket No. 97-21 and
EIGHTH ORDER ON RECONSIDERATION in CC Docket No. 96-45

Adopted: November 19, 1998 **Released:** November 20, 1998

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

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I. INTRODUCTION

1. In this Order, we reconsider the current organizational structure for administering the universal service support mechanisms and adopt a plan for merging the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) by January 1, 1999.[1] We substantially adopt the Report and Proposed Plan of Reorganization (the Plan) filed with the Commission by USAC, SLC, and RHCC on July 1, 1998, with certain modifications. We also adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission.

II. SUMMARY

2. Under the revised administrative structure we adopt in this Order, USAC will

[1] This Order does not address issues outside the scope of the Public Notice issued by the Common Carrier Bureau on July 15, 1998. Common Carrier Bureau Seeks Comment on Administration of Federal Universal Service Support Mechanisms, *Public Notice*, DA 98-1336 (rel. July 15, 1998) (*July 15 Public Notice*). *See, e.g.*, BellSouth comments at 4-5 (arguing Commission should establish separate funding and application process for internal connections under the schools and libraries support mechanism); Virginia comments at 2 (claiming 28-day posting requirement should be abolished); GTE comments at 4 (arguing beneficiaries of support mechanisms should be reimbursed directly); Vermont Public Service Board comments at 5 (requesting that Commission authorize USAC to administer state universal service mechanisms); Weisiger comments at 7 (claiming USAC and Commission should conduct a "procurement summit" with state representatives to help USAC formulate new procurement rules more in line with state requirements).

serve as the single entity responsible for administering all of the universal service support mechanisms as of January 1, 1999. USAC will continue to perform billing, collection, disbursement, and certain additional common functions for all of the support mechanisms. USAC's operations will include three divisions: the High Cost and Low Income Division, the Schools and Libraries Division, and the Rural Health Care Division. Three committees of the USAC Board of Directors (the Board) will oversee the operation of the three divisions. Any action taken by a committee with regard to its respective support mechanism will be binding on the Board, unless the USAC Board disapproves of such action by a two-thirds vote of a quorum of directors. The USAC Chief Executive Officer (CEO) will serve on all three committees. To the extent practicable, staff activities will be integrated among the divisions.. All staff will report directly or indirectly to the USAC CEO.

3. Our decision substantially adopts the Plan submitted, but includes a few modifications. The Plan has attempted to provide a balanced approach that takes into account the interests of all stakeholders. The Plan also reflects practical considerations, such as the need for reasonably-sized committees, and has tried to effect a balance among the different support mechanisms. We modify the Plan only where we conclude that such modifications would serve to achieve a more balanced reflection of all interest groups.

4. First, we modify the composition of the USAC Board and the committee that will focus on the rural health care support mechanism, in response to RHCC's concerns, and the concern of some commenters, that rural health care providers should have a greater presence on the Board. We also find that this modification is responsive to Congress's directive that the revised structure take into account the distinct mission of the rural health care mechanism.[2] Second, we add one incumbent local exchange carrier (LEC) to the High Cost and Low Income Committee beyond what the Plan proposes, to more fully reflect both rural and non-rural LECs' interests.

5. Finally, we adopt the Plan's recommendation that USAC be named permanent Administrator. We do not adopt the recommendation to divest USAC from NECA at this time. Rather, consistent with the Commission's proposal in the *Report to Congress*,[3] we will review in one year whether USAC should remain affiliated with NECA. We find that retaining USAC as a subsidiary of NECA best satisfies the congressional directive that the revised structure be responsive to certain findings of the General Accounting Office (GAO).

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[2] In the Conference Report on H.R. 3579, the House-Senate conferees stated that "any proposed administrative structure should take into account the distinct mission of providing universal service to rural health care providers . . . ." Conference Report on H.R. 3579, H. R. Rept. No. 504, 105th Cong., 2d Sess. *See infra* n. 14.

[3] *See infra* n. 17.

As set forth more fully below, we find that our decision is consistent with Congress's directive to establish a single entity to administer the universal service support mechanisms for schools, libraries and rural health care providers while, at the same time, preserving the distinct missions of the support mechanisms.

III. BACKGROUND

6. In the *Universal Service Order* released on May 8, 1997, the Commission appointed the National Exchange Carrier Association (NECA) as the temporary Administrator of the new universal service support mechanisms.[4] NECA's appointment as temporary Administrator was conditioned on NECA's agreement to make changes to its governance that would render it more representative of interests of entities other than local exchange carriers. The Commission's decisions were consistent with recommendations from the Federal-State Joint Board on Universal Service,[5] and were made pursuant to a public proceeding.[6] On July 18, 1997, based on a proposal submitted to the Commission by NECA,[7] the Commission directed NECA, as a condition of its appointment as the temporary Administrator, to establish an independent subsidiary, designated as USAC, to administer temporarily the high cost and low income support mechanisms.[8] The Commission also determined that USAC would perform billing, collection, and disbursement functions for all of the universal service support mechanisms on a temporary basis.[9] The Commission determined to establish a federal advisory committee to recommend to the Commission an entity to perform these functions on

[4] Federal-State Joint Board on Universal Service, *First Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 9216-9217, para. 866 (1997), *appeal pending sub nom. Texas Office of Util. Counsel*, No. 97-60421 (5th Cir., filed June 25, 1997) (*Universal Service Order*).

[5] Federal-State Joint Board on Universal Service, *Recommended Decision*, 12 FCC Rcd 87, 506-507, paras. 829-833 (1996).

[6] The Commission also sought guidance from the General Accounting Office (GAO) on how to establish an appropriate administration for federal universal service. Letter from Chmn. Reed E. Hundt, FCC, to J. Dexter Peach, General Accounting Office, dated January 31, 1997. A response from GAO was not received.

[7] In a January 10, 1997 letter, NECA proposed the creation of a wholly-owned subsidiary to administer the universal service support mechanisms. Letter from Bruce Baldwin, NECA, to Chmn. Reed E. Hundt, FCC, dated January 10, 1997.

[8] Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, *Second Report and Order and Second Order on Reconsideration*, CC Docket No. 97-21 and 96-45, 12 FCC Rcd 18400, 18418, para. 30 (*NECA Order*).

[9] *Id.*

a permanent basis.[10]

7. The Commission further directed NECA, as a condition of its appointment as the temporary Administrator, to establish two independent corporations -- SLC and RHCC -- to administer, on a permanent basis, certain aspects of the support mechanisms for schools, libraries, and rural health care providers.[11] SLC and RHCC have been administering the schools and libraries and rural health care support mechanisms since September 1997, in accordance with these directives. In a letter dated February 10, 1998, the GAO, pursuant to a review, concluded that the Commission exceeded its authority when it directed NECA to create SLC and RHCC.[12] GAO concluded that such action was in violation of the Government Corporation Control Act (GCCA).[13]

8. In connection with supplemental appropriations legislation enacted on May 1, 1998, Congress requested that the Commission prepare a report to Congress (*Report to Congress*) addressing certain issues concerning implementation of the federal universal service support mechanisms.[14] Specifically, Congress directed the Commission to propose a single entity to administer the support mechanisms for schools and libraries and rural health care providers,[15] and further directed that the proposal be "[p]ursuant to the findings of the General

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[10] *Id.* at 18432, para. 60.

[11] *Id.* at 18430-32, paras. 57 and 59.

[12] Letter from the Office of General Counsel, General Accounting Office, to the Honorable Ted Stevens, United States Senate, dated February 10, 1998.

[13] *See* 31 U.S.C. § 9102.

[14] On April 30, 1998, the U.S. Senate and U.S. House of Representatives passed H.R. 3579, which provided emergency supplemental appropriations for fiscal year 1998. H.R. 3579 was signed into law by President Clinton on May 1, 1998. The Conference Report on H.R. 3579 eliminated from the final bill specific legislative language contained in S. 1768, the supplemental appropriations bill adopted by the Senate on March 31, 1998 (the Senate bill). Section 2005 of the Senate bill had directed the Commission to prepare and submit to Congress by May 8th a two-part report on universal service. The statement of the House-Senate conferees accompanying the final bill nevertheless expressed the expectation that, among other things, "the FCC will comply with the reporting requirement in the Senate bill, respond to inquiries regarding the universal service contribution mechanisms, access charges and cost data, and propose a new structure for the implementation of the universal service programs." Conference Report on H.R. 3579, H. R. Rept. No. 105-504.

[15] Section 2005(b) of the Senate bill (section 2005(b)) provided in pertinent part: "(1) Report Due Date -- Pursuant to the findings of the General Accounting Office (B-278820) dated February 10, 1998, the Federal Communications Commission shall, by May 8, 1998, submit a 2-part report to the Congress under this section. (2) Revised Structure -- The report shall propose a revised structure for the administration of the programs established under section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)). The revised structure

Accounting Office."[16]

9. In its *Report to Congress*,[17] the Commission proposed that, by January 1, 1999, USAC would serve as the single entity responsible for administering all of the universal service support mechanisms including the schools and libraries and rural health care support mechanisms.[18] The Commission directed USAC, SLC, and RHCC jointly to prepare and submit by July 1, 1998 a plan of reorganization, for approval by the Commission.[19] On July 1, 1998, USAC, SLC, and RHCC filed the Plan.[20] RHCC filed a Separate Statement of the Rural Health Care Corporation and Request for Three Changes in the Plan (RHCC Separate Statement), dissenting from certain provisions of the Plan. In the RHCC Separate Statement, RHCC states that its support for the Plan is conditioned on the Commission adopting certain RHCC proposals, which are discussed more fully in Sections IV. D., F and G below. On July 15, 1998, the Common Carrier Bureau (Bureau) issued a Public Notice seeking comment on issues raised by the Plan and by the RHCC Separate Statement.[21]

IV. REVISED CORPORATE STRUCTURE

A. Consolidation of Administrative Responsibilities

10. *Background.* The universal service support mechanisms currently are administered by USAC, SLC, and RHCC. In its *Report to Congress*, the Commission

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shall consist of a
single entity."

[16] Section 2005(b).

[17] Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, *Report to Congress*, 13 FCC Rcd 11810 (1998) (*Report to Congress*).

[18] In the *Report to Congress*, the Commission stated that USAC would continue to administer the high cost and low income support mechanisms. *Report to Congress*, 13 FCC Rcd at 11815 n.26, 11816, paras. 8 n. 26, 10.

[19] Letter from Chief, Common Carrier Bureau, FCC, to the board of directors of the Universal Service Administrative Company, the Schools and Libraries Corporation, and the Rural Health Care Corporation, dated May 15, 1998.

[20] The complete report and plan of reorganization is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554. An electronic copy of the complete plan of reorganization also may be found on the Commission's Universal Service Web Page at <www.fcc.gov/ccb/universal_service/usacjuly.pdf>.

[21] *July 15 Public Notice.*

proposed vesting USAC with the administrative responsibilities for all of the universal service support mechanisms.[22] The Commission deemed this proposal "the best option in accordance with the language of section 2005 to propose a single entity to administer the schools and libraries and rural health care support mechanisms."[23] Noting the presence on the current USAC Board of individuals with experience and expertise in administering the schools and libraries and rural health care support mechanisms, the Commission concluded that USAC was uniquely qualified to assume responsibility for all of the support mechanisms.[24] The Commission also noted USAC's current responsibility for administering the high cost and low income mechanisms and for performing the billing, collection, and disbursement functions for all of the support mechanisms.[25] The Plan proposes that USAC would serve as the single entity responsible for administration of all of the universal service support mechanisms.[26]

11. *Discussion.* Commenters generally support vesting in USAC the responsibility for administering all of the universal service support mechanisms, including the creation of three divisions -- the Schools and Libraries Division, the Rural Health Care Division and the High Cost and Low Income Division -- to oversee each of the support mechanisms.[27]

12. We find that consolidating all of the administrative responsibilities into USAC is consistent with Congress's directive to establish a single entity to administer the universal service support mechanisms for schools, libraries, and rural health care providers,[28] and will minimize disruption and take advantage of USAC's experience in administering the universal service support mechanisms. We conclude that USAC is uniquely qualified to assume responsibility for the administration of all of the support mechanisms in light of its current responsibility for administering the high cost and low income mechanisms and for collecting and disbursing funds for the schools and libraries and rural health care support mechanisms.

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[22] *Report to Congress*, 13 FCC Rcd at 11815, para. 8.

[23] *Id.*

[24] *Id.*

[25] *Id.* n. 26.

[26] The Plan states that USAC, SLC, and RHCC considered and rejected the option of converting SLC and RHCC into separate subsidiaries of USAC. Plan at 17.

[27] *See, e.g.*, Bell Atlantic comments at 1-2; Sprint comments at 1; Pa PUC comments at 2. The Commonwealth of Virginia claims, however, that a "one-size-fits-all program is not the answer unless unrestricted vouchers are delegated to the states." Virginia comments at 2. The issue of whether vouchers should be delegated to the states is outside the scope of the *July 15 Public Notice*.

[28] *See supra* n.14 and n.15.

We find that the appointment of USAC minimizes the potential disruption of the ongoing administration of the universal service support mechanisms that could occur were we to appoint an entity that has not previously been involved in the administration of universal service. In addition, establishing USAC as the single administrator establishes clear lines of accountability.[29] We further believe, as detailed below, that the consolidation will result in administrative efficiencies. The distinct mission of each support mechanism will be preserved by establishing divisions within USAC. The divisions will perform the duties and functions currently performed by SLC, RHCC and the High Cost and Low Income Committee,[30] as directed by the committees of the USAC Board.[31] Moreover, this structure is responsive to Congress's directives that a single entity administer the schools and libraries and rural health care mechanisms, and that the revised structure take into account the distinct mission of the rural health care mechanism.[32]

13. We disagree with SBC's assertions that the revised administrative structure is flawed in light of its "erroneous" reliance on the lawfulness of USAC.[33] SBC contends that the GAO's finding that the Commission's creation of SLC and RHCC violated the Government Corporation Control Act (GCCA) similarly applies to the Commission's creation of USAC.[34]

14. The Commission has stated that it reasonably relied upon the authority of sections 254 and 4(i) when it conditioned the approval of NECA as the temporary Administrator of the support mechanisms on NECA's formation of SLC, RHCC, and USAC.[35] Indeed, in enacting section 254, Congress specifically contemplated that the Commission would create federal universal service support mechanisms.[36] NECA, an independent, non-

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[29] In response to US WEST's recommendation that the division heads be directly accountable to the Commission (US WEST comments at 15), we note that under the revised administrative structure, the division heads, through the USAC CEO and the USAC Board, will be accountable to the Commission.

[30] *See infra* Section V.

[31] *See infra* Section IV. E.

[32] *See supra* n.2.

[33] SBC comments at 2.

[34] SBC comments at 2.

[35] For an extended discussion of the Commission's arguments in reliance upon section 254 and 4(i), *see* Letter to Michael R. Volpe, General Accounting Office, dated January 5, 1998.

[36] 47 U.S.C. § 254(b)(5).

profit organization, had been administering the high cost support mechanism for more than a decade when Congress passed the Telecommunications Act of 1996.[37] Thus, Congress was aware of NECA's role when it adopted section 254,[38] which affirmed and expanded the Commission's authority to direct the administration of universal service and therefore, implicitly affirmed the Commission's authority to employ an independent entity to administer universal service. We find no indication that Congress sought to dismantle the existing administrative system, or to prohibit the Commission from using NECA, or another independent entity to administer universal service.[39] USAC was created as a subsidiary of NECA. Inasmuch as USAC is a subsidiary of NECA, which was lawfully created and has the authority to administer the universal service support mechanisms, we see no statutory impediment to USAC. Moreover, we find it significant that the GAO made findings only with respect to the creation of SLC and RHCC; GAO did not make any findings concerning the establishment of USAC. We thus find that consolidating the administration of universal service into USAC is "pursuant to the findings of the General Accounting Office."[40]

B. Limitations on USAC's Authority

15. *Background.* Section 2005(b)(2)(A) of the Senate bill provided that the single entity proposed by the Commission to administer the universal service support mechanisms must be "limited to implementation of the FCC rules for applications for discounts and processing the applications necessary to determine eligibility for discounts under section 254(h)" and "may not administer the programs in any manner that requires that entity to interpret the intent of Congress in establishing the programs or interpret any rule promulgated by the Commission in carrying out the programs, without appropriate consultation and guidance from the Commission."[41] In the *Report to Congress*, the Commission stated its expectation that USAC would apply its expertise to interpreting and applying existing decisional principles, but would not make policy or create the equivalent of new guidelines, or

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[37] The Court of Appeals for the District of Columbia Circuit upheld the Commission's reliance on section 4(i), prior to enactment of section 254, to establish this universal service support mechanism. *Rural Telephone Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988).

[38] *See also* House Report on H.R. 3636, National Communications Competition and Information Infrastructure Act of 1994, H.R. Rept. No. 560, 103rd Cong., 2d Sess.

[39] The Federal-State Joint Board on Universal Service, however, concluded that certain changes were necessary to ensure that the Administrator represented all interested parties. *Recommended Decision*, 12 FCC Rcd at 506, para. 832.

[40] Section 2005(b).

[41] Section 2005(b)(2)(A).

interpret the intent of Congress.[42] To foster greater accountability of USAC, the Commission proposed in the *Report to Congress* that USAC prepare and file with Congress and the Commission an annual report describing all significant aspects of its structure and operations for the preceding year.[43]

16. *Discussion.* Several commenters recommend that USAC's functions be confined strictly to applying the Commission's rules and that it be prohibited from engaging in policy making.[44] Consistent with Congress's directive that the combined entity shall not interpret rules or statute,[45] we emphasize that USAC's function under the revised structure will be exclusively administrative. USAC may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.[46] Where the Act or the Commission's rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed. Furthermore, USAC may advocate positions before the Commission and Commission staff only on administrative matters relating to the universal service support mechanisms.[47]

17. Commenters also urge the Commission to ensure USAC's accountability to the Commission.[48] The Commission retains ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the

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[42] *Id.*

[43] *Report to Congress*, 13 FCC Rcd at 11818, para. 14.

[44] *See, e.g.*, BellSouth comments at 3-4; Sprint reply comments at 2; US WEST comments at 5-9; Ameritech reply comments at 1. To the extent US WEST claims that SLC has misinterpreted the Commission's "Existing Contract" rule, this matter will be addressed in connection with US WEST's pending Petition for Reconsideration or Clarification of Fourth Order on Reconsideration of US WEST, Inc. in CC Docket No. 96-45, filed February 12, 1998.

[45] Section 2005(b)(2)(A).

[46] BellSouth claims that SLC has issued policy decisions, citing as an example SLC's ruling regarding wide area networks (WANs), which BellSouth argues is inconsistent with the Commission's holding in the *Fourth Order on Reconsideration*. BellSouth comments at 3 n. 4, *citing*, Federal-State Joint Board on Universal Service, *Fourth Order on Reconsideration*, CC Docket No. 96-45, 13 FCC Rcd 5318, 5430, para. 193 (1997) (*Fourth Order on Reconsideration*). SLC is prohibited from making decisions of law or policy, and has limited its activities to implementing existing rules and policies established by the Commission. SLC did not issue a ruling regarding WANs, but rather posted information on its website about WANs that was consistent with existing Commission rules and policies.

[47] 47 C.F.R. § 69.616(c).

[48] *See, e.g.*, Intermedia comments at 2; US West comments at 15.

support mechanisms and through its review of administrative decisions that are appealed to the Commission.[49] The consolidated USAC will continue to be accountable to the Commission through the procedures that currently apply to USAC, SLC, and RHCC. In fact, USAC's appointment as permanent Administrator and the expansion of its responsibilities are conditioned on its compliance with Commission rules and orders. Existing procedures to ensure accountability include the Commission's universal service rules,[50] which provide detailed guidance on administration of the universal service support mechanisms, annual audit requirements, regular coordination with Commission staff, and quarterly filing of projected administrative expenses and estimates of support mechanism demand.[51] In addition, the Commission will continue to oversee the structure and content of the annual independent audit that USAC is required to undertake.[52]

18. To foster greater accountability, we direct USAC to prepare and submit to the Commission and Congress an annual report by March 31 of each year. The Commission proposed such a report in the *Report to Congress* and several commenters supported this proposal.[53] The annual report should detail USAC's operations, activities, and accomplishments for the prior calendar year. In addition, the annual report should provide an assessment of contractor performance. Consistent with the comments of the American Library Association (ALA) and Intermedia,[54] we direct USAC to include in its annual report information about beneficiary and Service Provider participation in each of the universal service support mechanisms[55] and administrative actions intended to prevent waste, fraud, and abuse by beneficiaries and service providers. USAC shall consult with Commission staff to define the scope and content of the annual report. This report will serve as the basis for an annual review by the Commission of the universal service support mechanisms. Because the annual report will detail contractor operations, it also will enhance the Commission's

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[49] *See infra* Section IV. regarding procedures for Commission review of USAC decisions.

[50] 47 C.F.R. Parts 54 and 69.

[51] 47 C.F.R. § 54.709(a)(3).

[52] 47 C.F.R. § 69.621.

[53] *See, e.g.*, GTE comments at 8; Intermedia comments at. 7.

[54] ALA comments at 2; Intermedia comments at 7; *see also* GTE comments at 8. ALA recommends establishing benchmarks that would include an assessment of participation rates, quality and types of services supported, and overall quality, speed, consistency, and accuracy of the administration of the support mechanisms. ALA comments at 2.

[55] GTE comments at 3-4 (claiming the Plan does not streamline the administrative activities of applicants and service providers).

oversight of contractor performance.[56]

C. USAC Permanence and Divestiture

19. Background. In the *Universal Service Order*, the Commission provided that it would establish a federal advisory committee that would recommend to the Commission an entity to serve as permanent Administrator.[57] In the *Report to Congress*, the Commission proposed that the revised administrative structure be made permanent, subject to the Commission's review and determination after one year that the new structure is administering the distribution of universal service support to eligible entities in an efficient, effective, and competitively neutral manner.[58] The Commission also proposed that USAC be divested from NECA, pending Commission review of the revised structure after one year.[59] The *July 15 Public Notice* sought comment on the proposed divestiture of USAC from NECA and the timing of such divestiture.[60] The Plan recommends that USAC become the permanent Administrator and that it be divested from NECA as soon as possible.[61]

20. *Discussion.* We conclude that USAC should be made the permanent Administrator and hereby dispense with the requirement that the permanent Administrator be chosen by a federal advisory committee. Many commenters support the Plan's recommendation that the Commission designate USAC as the permanent Administrator.[62] The primary reason that USAC initially was designated as temporary rather than permanent Administrator was because the Joint Board had concerns that NECA and USAC, as a subsidiary of NECA, might be biased in favor of local exchange carriers and might not fully represent all interested parties.[63] We conclude that, subject to the modifications set forth in this Order, USAC fairly represents all interested parties, including a broad range of industry,

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[56] *See* Weisiger comments at 3 (claiming that the revised administrative structure should ensure stricter oversight of contractors).

[57] *Universal Service Order*, 12 FCC Rcd at 9214, para. 861; *see also NECA Order*, 12 FCC Rcd at 18432, para. 60.

[58] *Report to Congress*, 13 FCC Rcd at 11817, para. 12.

[59] *Report to Congress*, 13 FCC Rcd at 11818, para. 13.

[60] *July 15 Public Notice* at 4.

[61] Plan, Appendix A-1 at 21.

[62] *See, e.g.*, GTE comments at 2; MCI comments at 1.

[63] *NECA Order*, 12 FCC Rcd at 18416-18417, para. 27-28.

consumer, and beneficiary groups.[64] Therefore, we conclude that USAC should be the permanent Administrator. We also adopt the proposal set forth in the Commission's *Report to Congress* to review USAC's performance after one year to ensure that it is administering universal service in an efficient, effective, and competitively neutral manner. Providing permanence to the revised structure will ensure USAC's ability to continue to attract and maintain qualified personnel and to prevent unnecessary disruption to contributors and beneficiaries.

21. We decline to adopt the Plan's proposal to divest USAC from NECA at this time. Rather, consistent with the Commission's proposal in the *Report to Congress* to divest USAC from NECA pending Commission review of USAC's performance after one year,[65] we will review in one year whether USAC should remain affiliated with NECA. Retaining USAC as a subsidiary of NECA is most responsive to Congress's directive that the revised administrative structure be consistent with the GAO letter.[66] As discussed above, since NECA was established in 1983, neither GAO nor any other party has alleged that the creation of NECA was unlawful or that it violated the GCCA. Therefore, we find that retaining USAC's affiliation with NECA is responsive to concerns raised by the GAO. Moreover, maintaining USAC as a subsidiary of NECA should minimize disruption to the support mechanisms due to legal challenges.[67] Finally, to eliminate any further question concerning the Commission's authority to appoint USAC as the permanent Administrator, we renew our request for specific statutory authorization.[68]

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[64] Significantly, both the Plan and RHCC's Separate Statement do not propose to add new categories of representatives, nor do they demonstrate that any particular interest group or stakeholder is not represented currently on the USAC Board. To the extent that there are proposed modifications or disagreements, they focus on the number of representatives for each interest group.

[65] *Report to Congress*, 13 FCC Rcd at 11818, para. 13.

[66] *See supra* n. 15.

[67] We note that there never has been a challenge under the GCCA to NECA's authority to administer universal service.

[68] We note that, in an effort to respond to the issues raised by the GAO, the Commission requested in its *Report to Congress* that Congress provide specific statutory authorization to create or designate one or more entities, such as USAC, to administer the federal universal service support mechanisms. *Report to Congress*, 13 FCC Rcd at 11819, para. 15. The Commission stated that, although it believes it acted lawfully in directing NECA to create SLC and RHCC as a condition of its appointment as temporary Administrator, specific authorization would eliminate any question concerning the Commission's authority generally, and under the GCCA, to vest USAC with the administrative responsibilities for the schools and libraries and rural health care support mechanisms. *Id.* Congress has not yet acted on that request for specific statutory authorization.

D. Changes to the USAC Board

22. *Background.* The current USAC Board consists of seventeen members representing a cross-section of industry and beneficiary interests.[69] Under the Plan, the USAC Board would consist of these seventeen members plus the USAC CEO.[70]

23. In its separate statement, RHCC contends that, in addition to the rural health care representative who currently serves on the USAC Board, two additional rural health care representatives are needed to ensure effective administration of the rural health care mechanism under the revised structure.[71] If necessary to contain the size of the USAC Board, RHCC proposes that the Commission could eliminate seats held by representatives from other groups that serve on the Board.[72] RHCC also requests that the Commission identify the individuals who will serve on the USAC Board prior to the merger of SLC and RHCC into USAC.[73]

24. *Discussion.* We adopt the Plan's proposals to retain the current seventeen Board member positions, based on our belief that the current Board has achieved an appropriate balance of broad industry, beneficiary, and consumer representation. In addition, we are persuaded that we should add one additional rural health care provider to the Board. We also adopt the Plan's proposal to create a permanent position on the USAC Board for the USAC CEO, for a total of 19 members. Because the USAC CEO will have overall management responsibility for all of the support mechanisms, we conclude that the creation of

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[69] The USAC Board currently consists of the following seventeen members: (i) three incumbent local exchange carrier representatives (one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of $40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of $40 million or less); (ii) two interexchange carrier representatives (one director representing interexchange carriers with more than $3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of $3 billion or less); (iii) one commercial mobile radio service representative; (iv) one competitive local exchange carrier representative; (v) one cable operator representative; (vi) one information service provider representative; (vii) three school representatives; (viii) one library representative; (ix) one rural health care provider representative; (x) one low income consumer representative; (xi) one state telecommunications regulator; and (xii) one state consumer advocate representative. 47 C.F.R. § 69.613.

[70] Plan, Appendix A-2 at 22.

[71] RHCC Separate Statement at 5.

[72] *Id.* at 6.

[73] *Id.* at 5.

a voting position on the Board for the USAC CEO will offer continuity and consistency to USAC's administration, and will create clear lines of accountability. We direct that USAC's by-laws be amended to reflect the addition of the USAC CEO, as well as an additional rural health care position.

25. We modify the Plan to add a second rural health care representative to the USAC Board. We agree with RHCC and numerous commenters[74] that additional rural health care representation will assist the Board's ability to address technical issues that are unique to the rural health care community and that may fall outside of the general competence and expertise of the USAC Board as a whole. We believe that adding a second rural health care representative will help ensure that the administrative structure "take[s] into account the distinct mission of providing universal service to rural health care providers," in accordance with Congress's direction.[75] Rather than changing the Board's composition by replacing schools and libraries representatives with rural health care provider representatives, as GTE suggests,[76] we have determined to add a second rural health care provider representative to the Board. We find that this best ensures adequate representation of all interested groups, without disrupting the existing representation of schools and libraries, which was decided based on input from all interested parties. Accordingly, the additional rural health care representative on the Rural Health Care Board shall serve on the USAC Board.

26. We are not convinced by Intermedia's suggestion that subject matter expertise is necessary only at the division level, and would not be helpful on the Board as well.[77] We also decline to allocate a total of three positions on the USAC Board for rural health care interests, as requested by RHCC. Given the relatively smaller size of the rural health care mechanism compared to the schools and libraries support mechanism, we find that including

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[74] A number of commenters, particularly those from the health care community, support RHCC's request to expand rural health care representation on the USAC Board from the single rural heath care position on the current Board to three rural health care positions on the new Board. *See, e.g.*, Letter from Russ Newman, Ph.D, J.D., American Psychological Association to Chmn. William E. Kennard, FCC, dated August 5, 1998 at 3-4; Letter from Patrick B. Harr, M.D., American Academy of Family Physicians, to Chmn. William E. Kennard, FCC, dated July 16, 1998 at 1; Letter from Rick Pollack, American Hospital Association to Chmn. William E. Kennard, FCC, dated August 4, 1998 at 1; Letter from Donna E. Shalala, Secretary of Department of Health and Human Service, to Chmn. William E. Kennard, FCC, dated at August 5, 1998; Letter from Gail R. Bellamy, National Rural Health Association, to Chmn. William E. Kennard, FCC, dated July 16, 1998; Letter from Thomas L. Milne, National Association of County and City Health Officials, to Magalie Roman Salas, FCC, dated August 3, 1998; US WEST comments at 13.

[75] Conference Report on H.R. 3579, H. Rept. 105-504.

[76] GTE comments at 2-3.

[77] Intermedia comments at 4.

two rural health care representatives ensures adequate and proportionate representation of health care interests.[78]

27. The American Psychological Association recommends that we allocate one rural heath care position specifically to a representative of rural behavioral health care providers.[79] The Secretary of Health and Human Services recommends that we add a representative with experience in the use of telemedicine in the delivery of rural health care and another one with experience in rural public health.[80] We are reluctant to substitute our judgment for that of the rural health care community concerning the particular categories of rural health care providers that should serve on the USAC Board.[81] Accordingly, we will permit the rural health care community to nominate, through the consensus nomination process,[82] the particular rural health care provider representatives who should serve on the USAC Board. This approach is consistent with the Commission's decision not to specify the particular categories of educational institutions (e.g., public versus private institutions) that are

[78] The Commission has estimated that there are 12,000 rural health care providers that potentially are eligible for support under the rural health care support mechanism. *See Universal Service Order*, 12 FCC Rcd at 9141, para. 706. By contrast, for example, the Commission has estimated that there are approximately 113,000 public and non-public schools that potentially are eligible for support under the schools and libraries support mechanism. Federal-State Joint Board on Universal Service and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, 13 FCC Rcd 5318, 5497, para. 325 (citations omitted). In addition, there are approximately 15,904 libraries, including branches, that are eligible for support under the schools and libraries support mechanism. *Id.* For these same reasons, we decline to adopt commenters' recommendation that rural health care representation on the Board be commensurate with schools and libraries representation on the Board (*see, e.g.*, Letter from Ron Nelson, American Academy of Physician Assistants, to Chmn. William E. Kennard, FCC, dated August 3, 1998; Letter from Joe Barker and Dianne McSwain, National Rural Development Partnership, to Chmn. William E. Kennard, FCC, dated August 3, 1998) or that the proportional rural health care representation on the USAC Board be commensurate with the proportional rural health care representation on the RHCC Board. APA comments at 3 (claiming that rural health care representatives comprise 25% of the RHCC Board, but will comprise only 5-6% of the USAC Board).

[79] APA comments at 3.

[80] Letter from Donna E. Shalala, Secretary of Health and Human Services, to the Honorable William E. Kennard, dated August 5, 1998 *see also* Letter from Nelba Chavez, Ph.D., Department of Health and Human Services, to Chmn. William E. Kennard, FCC, dated August 27, 1998.

[81] We note that, in the *NECA Order*, we concluded that "each group to be represented on the USAC Board is best suited to nominate a qualified individual or individuals to represent that group's interest." *NECA Order*, 12 FCC Rcd at 18423, para. 39.

[82] Appendix A, Rule 54.703.

represented on the USAC Board. Rather, the Commission has permitted the education community to select, through the nomination process, the particular schools representatives who serve on the USAC Board.[83]

28. We decline to adopt the American Library Association's recommendation that we increase library representation on the Board commensurate with any increase in rural health care representation on the Board.[84] Although the American Library Association identifies certain universal service implementation issues that are unique to libraries,[85] we find that, for the most part, schools and libraries face similar issues as beneficiaries of the same universal service support mechanism.[86] As a result, in determining whether libraries are adequately represented, we find that it is appropriate to consider whether schools and libraries, as a whole, have adequate representation on the Board. We believe this is consistent with Congress's establishment of a single support mechanism for schools and libraries.[87] Accordingly, we conclude that a total of four positions on the USAC Board adequately represents these beneficiary interests. Furthermore, in light of the relative number of potential school and library participants, we find that it is appropriate to allocate three representatives to schools and one representative to libraries.[88]

29. We decline to adopt one commenter's suggestion that we fundamentally alter the composition of the Board by adding a variety of industry representatives.[89] We find that the USAC Board, as currently configured, generally has afforded fair representation of the diverse participants in, and competitively neutral administration of, the universal service support mechanisms. We are reluctant to increase further the size of the Board, absent a demonstrated need, because we are concerned that to do so might make the decision-making process more difficult.

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[83] *NECA Order*, 12 FCC Rcd at 18421-22, para. 36.

[84] ALA comments at 3-4.

[85] ALA comments at 3-4.

[86] For example, schools and libraries are subject to the same discount mechanism (*see* 47 C.F.R. § 54.505), are eligible for support for the same services (*see, e.g.*, 47 C.F.R. § 54.502), and are subject to the same application process. *See* 47 C.F.R. § 54.505.

[87] 47 U.S.C. § 254(h)(1)(B).

[88] *See supra* n. 78.

[89] Weisiger comments at 5.

E. USAC Committees

30. *Background.* The Plan proposes to establish two new Committees of the Board -- the Schools and Libraries Committee and the Rural Health Care Committee -- and to retain the existing High Cost and Low Income Committee. Governance of the new committees would be modeled after the provisions in USAC's by-laws regarding the High Cost and Low Income Committee. Each Committee of the Board would be vested with the powers and authority necessary to maintain the unique missions and functions of the schools and libraries, rural health care, high cost and low income support mechanisms, respectively. The USAC Board would not have the authority to modify substantially the power or authority of the Committees of the Board without Commission approval.

31. As proposed by the Plan, the Schools and Libraries Committee would have the power, in accordance with Commission rules and oversight, to make decisions concerning: (i) how USAC projects demand for the schools and libraries support mechanism; (ii) development of applications and associated instructions as needed for the schools and libraries mechanism; (iii) administration of the application process, including activities to ensure compliance with FCC rules and regulations; (iv) the performance of outreach and education functions; and (v) development and implementation of other distinctive functions.[90] The Committee would consist of the following seven members of the USAC Board: three school representatives, one library representative, one service provider representative, one at-large representative elected by the USAC Board, and the USAC CEO.[91]

32. As proposed by the Plan, the Rural Health Care Committee would have the power, in accordance with Commission rules and oversight, to make decisions concerning: (i) how USAC projects demand for the rural health care support mechanism; (ii) development of applications as needed for the rural health care mechanism; (iii) administering the application process; (iv) determination of discount levels; (v) the performance of outreach and education functions; and (vi) development and implementation of other distinctive functions.[92] The Rural Health Care Committee would consist of the following seven members of the USAC Board: one rural health care representative, one service provider representative, two at-large representatives elected by the USAC Board, one state telecommunications regulator, one state consumer advocate, and the USAC CEO.[93]

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[90] Plan, Appendix A-2 at 24.

[91] *Id.*

[92] *Id.* at 23.

[93] *Id.* at 24.

33. As proposed by the Plan, the High Cost and Low Income Committee would continue to function as under the existing administrative structure, but committee decisions would be subject to override by the full USAC Board.[94] The Plan proposes, however, that the Committee, which currently consists of ten members, would, under the revised structure, consist of the following eight members of the USAC Board: one low income representative, one state telecommunications regulator, one state consumer advocate, one incumbent local exchange carrier (LEC) representative, one interexchange carrier (IXC) representative, one competing LEC representative, one commercial mobile radio service representative, and the USAC CEO.[95]

34. *Discussion.* We generally find that the composition of the Committees of the Board proposed by the Plan adequately represents the variety of beneficiaries' interests and therefore we adopt, subject to the modifications set forth below, the Plan's recommendation to retain the existing High Cost and Low Income Committee and to establish two new committees of the Board: the Schools and Libraries Committee and the Rural Health Care Committee. Specifically, we adopt the Plan's proposal with respect to the make-up of the Schools and Libraries Committee.[96] We also adopt the Plan's proposal regarding the Rural Health Care Committee, except that we add one rural health care provider to the Committee. We adopt the Plan's proposal with respect to the High Cost and Low Income Committee, except that we add one incumbent LEC to that Committee. Finally, to enhance Commission oversight of the revised administrative structure, we adopt the Plan's proposal that the USAC Board may not modify substantially the power or authority of the Committees of the Board without Commission approval.

35. We disagree with Intermedia's claims that committees are unnecessary in light of the statutory provision that limits USAC to the performance of purely administrative functions.[97] According to Intermedia, staff in each of the divisions could provide the necessary expertise and interface with particular communities as needed. We are persuaded by the Plan, however, that the proposed committees are uniquely able to provide expertise

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[94] *See infra* Section IV. F. regarding the Board's authority to override committee decisions. Decisions of the existing High Cost and Low Income Committee are not subject to override by the full USAC Board. 47 C.F.R. § 69.615.

[95] *Id.* at 23.

[96] With regard to Weisiger's recommendation that we add a non-carrier service provider representative to the Schools and Libraries Committee (Weisiger comments at 5), we note that there is one at-large position on the Schools and Libraries Committee that may be filled by a non-carrier service provider.

[97] Intermedia comments at 3.

necessary to administer the support mechanisms most effectively. For example, the Plan notes that the committee structure will enable USAC to target communications to the particular beneficiary or service provider group impacted by a support mechanism.[98] We conclude that the creation of specialized committees will help preserve the distinct mission of each of the support mechanisms and, in particular, is consistent with Congress's directive to "take into account the distinct mission of providing universal service to rural health care providers."[99]

36. Numerous commenters from the rural health care community oppose the Plan's proposed composition of the Rural Health Care Committee, which consists of one rural health care representative on a seven-member committee.[100] The majority of these commenters recommends that most, if not all, of the members of the Rural Health Care Committee should represent rural health care interests. Some commenters request that USAC establish an advisory committee that would provide guidance to USAC on rural health care issues.[101] We share commenters' concerns with respect to rural health care representation on the Rural Health Care Committee as proposed by the Plan. Accordingly, we conclude that the Committee should include the additional rural health care representative that we allocate to the USAC Board in this Order. We find that adding a second rural health care provider will enable the committee to represent more fully the variety of beneficiaries' interests. We also find that adding an additional representative to the committee will not disturb the balance created by the Plan, which recommended three committees of approximately the same size.

37. We are not persuaded, however, that rural health care providers should comprise most or all of the committee positions, and in fact, RHCC's Separate Statement would not have resulted in a majority of rural health care providers serving on the Rural Health Care Committee. There are many different groups affected by the rural health care support mechanism, including service providers and ratepayers. We find that each interest

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[98] Plan at 11.

[99] Conference Report on H.R. 3579, H. Rept. 105-504.

[100] *See, e.g.,* Letter from Joe Barker and Dianne McSwain, National Rural Development Partnership, to Chmn. William E. Kennard, FCC, dated August 3, 1998; Letter from Ron Nelson, American Academy of Physicians Assistants, to Magalie Roman Salas, FCC, dated august 3, 1998; Letter from Christine Pellerin, National Association of Community Health Centers, Inc., to Chmn. William E. Kennard, dated August 5, 1998.

[101] Letter from Gail R. Bellamy, PhD, National Rural Health Association to Chmn. William E. Kennard, FCC, dated July 16, 1998 (all seven members of the "Rural Health Advisory Committee" should have substantial knowledge and experience in telehealth and rural health care issues); Letter from Christine Pellerin, National Association of Community Health Centers, Inc., to Chmn. William E. Kennard, FCC, dated August 5, 1998 (Commission should restructure the "Rural Health Care Advisory Committee" so that non-USAC Board member may serve on the Committee). The Plan does not contemplate that non-Board members would serve on these committees.

group should have some representation on the committee. We note that the other two committees will have a broad range of interests represented, and will not be comprised solely of beneficiaries. We also reject suggestions that the Commission establish a separate advisory committee on rural health care matters. To the extent that subject matter expertise is needed, however, USAC is free to seek input from various industry and non-industry groups on particular rural health care matters.

38. The National Telephone Cooperative Association (NTCA) contends that the Plan's proposal for restructuring the High Cost and Low Income Committee would result in a committee that is not sufficiently representative of the beneficiaries of the high cost and low-income mechanisms.[102] We agree with NTCA that the "interests and perspectives of a rural carrier will vary significantly from those of a urban carrier."[103] The Plan proposes only one incumbent LEC member of the High Cost and Low Income Committee.[104] We find that one incumbent LEC representative may find it difficult to represent fairly the interests of both small and large carriers. To ensure that both rural and non-rural telephone companies receive adequate representation, we add one more incumbent LEC to the High Cost and Low Income Committee than proposed by the Plan. One incumbent LEC on the Board shall represent rural telephone companies, as that term is defined in section 3(37) of the Act,[105] and one incumbent LEC shall represent non-rural telephone companies.[106] We do not adopt NTCA's suggestion that we retain all the members of the current High Cost and Low Income Committee. We find that retaining the existing ten (10) committee members is unnecessary to represent

[102] NTCA comments at 2; *see also* GTE reply comments at 5. Specifically, NTCA opposes the Plan's proposal to reduce the number of incumbent LECs and IXCs on the High Cost and Low Income Committee from three incumbent LECs to one incumbent LEC and from two IXCs to one IXC. NTCA comments at 2. NTCA argues that one incumbent LEC and one IXC cannot sufficiently represent the interests of rural carriers, whose interests are distinct from those of urban carriers. *Id.*. NTCA recommends that the Commission add the USAC CEO, but retain the current ten-member High Cost and Low Income Committee. *Id.* at 3.

[103] NTCA comments at 2.

[104] Plan, Appendix A-2 at 23.

[105] 47 U.S.C. § 153(37).

[106] A rural telephone company is a telephone company that meets the definition of a rural telephone company set forth in section 3(37) of the Act. 47 U.S.C. § 153(37). Companies that do not meet that definition would be considered non-rural telephone companies. For this purpose, it is sufficient that the rural incumbent LEC representative and the non-rural incumbent LEC representative substantially represent their respective constituencies. Those individuals need not represent exclusively rural or non-rural incumbent LECs.

contributors and beneficiaries of the high cost and low income support mechanisms.[107] We also are concerned that an 11 member committee, comprised of the existing ten (10) members plus the USAC CEO, would disturb the balance achieved by the Plan in proposing three committees of approximately the same size.

F. Binding Authority of the Committees

39. *Background.* The Plan provides that, absent Commission approval, the Board would not have the power or authority to remove, or to modify in a material way, the power and authority of any of the committees. The Plan further proposes that any action taken by the Rural Health Care Committee, the Schools and Libraries Committee, and the High Cost and Low Income Committee would be binding on the Board, unless such action is presented for review to the full Board by the USAC CEO and the Board disapproves of such action by a two-thirds vote of a quorum of directors (Board Disapproval).[108] The budgets prepared by each committee would be subject to Board review as part of the combined budget of the consolidated USAC and any modifications to division budgets also would be subject to Board Disapproval.[109] RHCC objects to the Plan's proposal to confer upon the Board the authority to override the Rural Health Care Committee's decisions regarding "programmatic aspects" of the rural health care support mechanism, including the committee's decision regarding the division's budget.[110]

40. *Discussion.* We find that, by vesting in the committees the power and authority to bind the USAC Board on matters relating to the daily administration of the support mechanisms, the Plan gives the committees the autonomy and flexibility needed to administer efficiently and effectively each of the support mechanisms. We also conclude that the power vested in the USAC Board to disapprove the decision of a committee under the Board Disapproval procedure ensures that USAC is accountable for all administrative decisions.

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[107] In response to NTCA's request that the Commission retain the existing ten-member High Cost and Low Income Committee, USAC and SLC note that a ten-member committee would render ineffective the Plan's proposal that committee actions be subject to a two-thirds disapproval by the eighteen-member USAC Board. USAC and SLC reply comments at 2.

[108] Plan, Appendix A-2 at 23-24. The Plan does not define the term quorum. We note that under the existing by-laws of USAC, SLC and RHCC, a majority of the whole Board constitutes a quorum "except when a vacancy or vacancies prevents such a majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board."

[109] Under the Plan, the committees would not have the power or authority to bind the Board on matters related to billing, collection, and disbursement functions, which are performed separately by USAC.

[110] RHCC Separate Statement at 5.

Thus, we do not believe, as some commenters suggest, that the committees' ability to bind the Board would somehow diminish the Commission's ultimate responsibility for administration of the universal service support mechanisms.[111] Similarly, because the Board and its committees are subject to Commission rules and oversight, we do not believe, as Intermedia suggests, that the Board Disapproval process permits the Board, through its committees, to make decisions outside the scope of its authority.[112] We also find that subjecting committee budgets to the Board Disapproval procedure facilitates oversight of committee administrative costs. RHCC requests that the Commission grant the Rural Health Care Committee the authority to bind the full USAC Board on all "programmatic aspects." We find that such an approach would be at odds with Congress's directive to establish a single Administrator that is accountable for all decisions regarding the schools and libraries and rural health care support mechanisms.

G. The USAC CEO

41. *Background.* Under the Plan, the USAC CEO would have the authority to hire and fire the division heads and division staff.[113] The USAC CEO would have management responsibility for all employees, which could be delegated to the division heads.[114] RHCC objects to granting the USAC CEO authority over certain personnel matters.[115] Although RHCC agrees that the CEO should have the authority to hire and fire the division heads, it argues that division heads, rather than the CEO, should have the authority to hire and fire division staff.[116]

42. *Discussion.* We adopt the Plan's proposal that the USAC CEO will have ultimate authority over all personnel matters, but may delegate to division heads the authority to hire and fire division staff. We find that vesting the hiring and firing authority with the USAC CEO is necessary to ensure accountability and effective administration of USAC. Although we disagree with RHCC, GTE, and US WEST that the division heads rather than

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[111] *See, e.g.*, GTE comments at 2.

[112] Intermedia comments at 3. *See infra* Section IV. B for a discussion regarding the Commission's oversight of the universal service support mechanisms.

[113] Plan at 11.

[114] *Id.*

[115] RHCC Separate Statement at 5.

[116] *Id.*

the USAC CEO should have authority to hire and fire division staff,[117] we find that permitting the USAC CEO to delegate some hiring and firing decisions to division chiefs provides reasonable flexibility and may be the most efficient course of action in some instances.

H. Selection Process for USAC Board and Chief Executive Officer

43. *Background.* The Plan proposes that the directors of the USAC Board be nominated and selected pursuant to the procedures set forth in section 69.614 of the Commission's rules, which provides, *inter alia*, that nominations shall be made by the industry and non-industry groups represented on the Board and submitted to the Commission for review and selection by the Chairman of the Commission.[118] The Plan further proposes that USAC's Board members, with the exception of the USAC CEO, would serve staggered three-year terms. The USAC CEO would become a permanent Board member. According to the Plan, the terms of six Board members would expire on October 1, 1999, another six on October 1, 2000, and the remaining five on October 1, 2001 (collectively referred to as the "Initial Terms"). The Plan proposes that the Commission would determine which members' Initial Terms would expire on the designated expiration dates. The Plan is silent on the selection process for the USAC CEO.[119]

44. *Discussion.* We adopt the Plan's recommendation that the consolidated USAC Board be selected under the procedures set forth in section 69.614 of the Commission's rules.[120] We do not agree with the view expressed by GTE that procedures set forth in section 69.614 allow Board appointments to be "influenced by the Commission's individual preferences."[121] Candidates are nominated through a consensus process of particular interest groups and therefore, it is the preference of a particular industry or non-industry group represented on the Board that is reflected through this process, not the Commission's

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[117] GTE comments at 3; US WEST comments at 14.

[118] Plan, Appendix A-2 at 22. Section 69.614(d) of the Commission's rules, 47 C.F.R. § 69.614(d), provides that "[t]he Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and shall select the independent subsidiary's Board of Directors."

[119] We note that in the RHCC Separate Statement, RHCC asks the Commission to identify the members who would compose the new Board. Separate Statement at 5.

[120] 47 C.F. R. § 69.614

[121] GTE comments at 5; *see also* BellSouth comments at 6 (recommending selection of USAC Board members pursuant to procedure currently used for selection of NECA Board members, *i.e.*, by relevant professional and trade organizations without need for Commission approval); *see also* Ameritech reply comments at 3.

individual preferences. Moreover, our rules provide that Board members will be nominated by the Commission Chairman only if an industry or non-industry group is unable to reach a consensus or fails to submit a nomination.[122] The process we adopt will encourage groups to nominate the most experienced and knowledgeable individuals who can most effectively represent the interests of that constituency, while also ensuring that the Commission retains a mechanism for appointing Board members when industry or non-industry groups fail to achieve consensus.

45. With regard to Board member terms, section 69.614(e) of the Commission's rules provides that USAC Board members shall serve two-year terms and may be reappointed for subsequent terms pursuant to the nomination and selection process described above.[123] The Plan, however, proposes that Board members serve staggered three-year terms. We adopt the Plan's proposal and amend our rules accordingly. These measures help ensure continuity on the Board and continuity in the administration of the support mechanisms. Because the merger is scheduled to take place by January 1, 1999, we conclude that Board member terms should commence on January 1 and conclude on December 31, three years after appointment. Consistent with the January 1, 1999 merger date, and to ensure continuity during the initial implementation of the revised administrative structure, we conclude that the terms of six Board members should expire on December 31, 2000, another six on December 31, 2001, and the remaining six on December 31, 2002.[124] Insofar as Board member terms will not begin to expire until December 31, 2000, we believe this responds to the American Library Association's request that we retain the current library representative during the initial phases of reorganization.[125] USAC shall determine when particular Board member terms shall expire. In making this determination, USAC should attempt to maintain continuity on the Board by providing that the first set of Board members whose terms will expire will be representatives of industry and non-industry groups with multiple representatives on the Board.

46. As noted above, the Plan is silent with regard to the selection process for the USAC CEO. The *July 15 Public Notice* proposed adopting the procedure that currently

[122] 47 C.F. R. § 69.614(d).

[123] 47 C.F.R. § 69.614(e).

[124] To ensure that the Chairman of the Commission has adequate time to review candidates for the Board, nominations should be submitted to the Commission sixty (60) days prior to the expiration of a director's term. *See* Appendix A, Rule 54.703(c).

[125] ALA comments at 4.

applies to the selection of a CEO for SLC and RHCC.[126] Under that procedure, the consolidated USAC Board would submit to the Chairman of the Commission a candidate to serve as the USAC CEO. Bell Atlantic supports this proposal.[127] The Pennsylvania Public Utility Commission supports approval of the USAC CEO by the Chairman of the Commission, but recommends referral to the other commissioners "to ensure greater visibility and accountability."[128] By contrast, BellSouth recommends selection by the USAC Board, subject to removal for good cause by the Chairman of the Commission.[129] We conclude that the USAC Board should have the primary responsibility for selection of a CEO, and that approval by the Chairman of the Commission ensures appropriate oversight.

I. Compensation Limitations

47. *Background.* In the Conference Report on H.R. 3579, the House-Senate conferees concurred with section 2005(c) of the Senate bill relating to compensation for employees of the entity proposed by the Commission to administer the schools and libraries and rural health care support mechanisms.[130] In a recent order regarding funding levels under the schools and libraries mechanism, the Commission concluded that, effective July 1, 1998, the Administrator must, as a condition of its continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of Title 5 of the United States Code.[131] The Commission further stated that such level of compensation would apply to all officers and

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[126] *July 15 Public Notice* at 3. Section 69.617(b)(5), 47 C.F.R. § 69.617(b)(5), provides that: "The directors representing schools, libraries, and service providers and the independent director on the Schools and Libraries Corporation's Board of Directors shall submit to the Chairman of the Federal Communications Commission a candidate to serve as the Chief Executive Officer (CEO) of the Schools and Libraries Corporation."

[127] Bell Atlantic comments at 2.

[128] Pa PUC comments at 2.

[129] BellSouth comments at 6-7.

[130] H.R. Conf. Rep. No. 504, 105th Cong., 2d Sess. (1998), 144 Cong. Rec. H2629-01, H2651. Section 2005(c) of the Senate bill provided: No officer or employee of the entity to be proposed to be established under subsection (b)(2) of this section may be compensated at an annual rate of pay, including any non-regular, extraordinary, or unexpected payment based on specific determinations of exceptionally meritorious service or otherwise, bonuses, or any other compensation (either monetary or in-kind), which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code. S.1768, section 2005(c); 144 Cong. Rec. S2452-02, S2459.

[131] *Fifth Order on Reconsideration* at para. 46.

employees of SLC and RHCC, as currently organized, as well as to all officers and employees in the consolidated administrative corporation following reorganization on January 1, 1999.[132] The *July 15 Public Notice* sought comment on whether the salary limitations contained in section 2005(c) should apply to all officers and employees of USAC, including, for example, those responsible for administering the support mechanisms for high cost areas and low income consumers as well as those responsible for performing billing, collection and disbursement functions for all of the support mechanisms. The *July 15 Public Notice* also sought comment on whether such compensation limitations should apply to officers and employees of NECA.

48. *Discussion.* Congress's intent regarding the level of compensation for officers and employees of the revised administrative structure was stated clearly in both section 2005(c) of the Senate bill and the Conference Report. Although few parties commented on the issue of salary limitations, those who addressed the issue support the imposition of such limitations on all officers and employees of the consolidated USAC.[133] The Senate and the House-Senate conferees stated that compensation limitations should be imposed on the officers and employees of the entity to be proposed under subsection 2005(b)(2) of the Senate bill. Thus, consistent with the will of Congress, we direct the consolidated USAC to compensate all officers and employees under the consolidated USAC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of Title 5 of the United States Code. These compensation limitations shall apply to officers and employees who will administer the schools, libraries, rural health care, high cost, and low income support mechanisms, as well as those responsible for USAC's billing, collection and disbursement functions.

49. We decline at this time to extend the above salary limitations to NECA inasmuch as Congress did not direct the imposition of salary limitations on NECA. The commenters that address the issue maintain that it would be inappropriate to apply such limitations.[134] We agree with commenters and do not extend salary limitations to NECA.

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[132] *Id.* We note that the *Fifth Order on Reconsideration* mistakenly states that the reorganization will take place by July 1, 1998.

[133] *See, e.g.*, Intermedia comments at 8; PaPUC comments at 3.

[134] NTCA reply comments at 4; PaPUC comments at 3; NECA comments at 2-4.

V. ADMINISTRATIVE EFFICIENCIES UNDER THE UNIFIED STRUCTURE

A. Background

50. The Plan proposes that, where efficiencies can be achieved, functions and operations that are common to the administration of all three universal service support mechanisms would be consolidated.[135] At the same time, the Plan proposes to maintain the separate operation of those functions that are unique to a particular support mechanism, concluding that, for those functions, greater efficiencies would be achieved through separate operations.[136] The Plan further proposes that certain operations would be kept separate for a. transitional period to maintain continuity for employees and the public, and to allow for the expiration or assignment of certain existing contracts that are operating effectively.[137]

51. *Administration.* The plan proposes that a combined USAC office would be established by January 1, 1999, including a common, cost-effective information system.[138] The Plan proposes that all contracts would be transferred to USAC when the merger is completed.[139] After completion of the merger, each contract would be reviewed to determine whether it should be renewed, renegotiated, or assigned.[140] The plan further proposes that USAC would obtain common insurance coverage for all necessary items, including property, liability, and directors and officers.[141] After the merger, USAC also would have one set of administrative policies, procedures, and practices.[142] The new USAC Board would determine whether new administrative policies are necessary to reflect the unique functions of the different divisions and committees.[143] In addition, to ensure that the unique functions of the three support mechanisms are maintained, the Plan further proposes that each of the committees and divisions would continue to communicate separately with its community of

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[135] Plan at 8.

[136] *Id.*

[137] *Id.*

[138] Plan at 9, 10-11.

[139] Plan, Appendix A-3 at 25, Appendix C at 32.

[140] Plan, Appendix C to at 32.

[141] Plan at 9.

[142] *Id.*

[143] *Id.*

interest and, to the extent necessary, would maintain separate communications with vendors unique to that community.[144]

52. *Finance*. The Plan provides that the combined entity would consolidate the administration of its finances. For example, USAC would use one set of accounting policies, practices, and procedures and would issue a consolidated USAC financial statement.[145] At the same time, however, USAC would have the capacity to identify the costs of each of its divisions.[146] USAC would have a common general ledger for all four support mechanisms and would maintain a single bank account.[147] The Plan further proposes that a combined payroll system would be established as soon as feasible.[148] In addition, to ensure a fair and accurate allocation of costs to the four support mechanisms, the Plan proposes that USAC would submit a proposed allocation method to the Commission for approval.[149]

53. *Audits*. The Plan further proposes that one auditing firm would be retained to conduct the audit for the combined entity.[150] Financial and operational auditing functions would be combined to examine common operational systems and programs.[151] The Plan recognizes that each of the divisions is charged with implementing a distinct universal service support mechanism and that separate evaluations of each division may be necessary.[152] In this regard, the Plan proposes that the same auditing firm also would conduct a separate audit of functions unique to each support mechanism, such as interaction with communities of interest and review of certain customer submissions.[153]

54. *Budgets*. Each division head would develop a budget for his or her respective

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[144] Plan at 11.

[145] Plan at 9.

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] Plan, Appendix A-3 at 25.

[150] Plan at 10.

[151] *Id.*

[152] Plan at 10, 11-12.

[153] Plan at 11-12.

support mechanism.[154] These budgets would be reviewed and approved (or rejected) by the appropriate Committee of the Board.[155] Changes to division budgets that have been reviewed and approved by the appropriate Committee would require a two-thirds vote of the USAC Board.[156] The CEO would prepare the portions of the budget that relate to functions that are common to all three divisions or to a function performed solely by USAC.[157] A combined budget would be submitted to the Commission for approval under section 69.620(b) of the Commission's rules.[158]

55. *Legal and Regulatory.* The Plan proposes a common liaison with the Commission and contributing carriers for all universal service support mechanisms.[159] All regulatory filings would be consolidated.[160] The Plan proposes to retain one in-house counsel for the combined entity, to be chosen by the USAC CEO.[161] In addition, common outside counsel would be retained for use by all committees and divisions, which the Plan states would ensure that USAC operates in a consistent and coordinated fashion.[162] The Plan also indicates that, under certain circumstances, separate counsel may be necessary.[163]

56. *Operations.* The Plan proposes that the combined entity would use the same invoice processing system.[164] Although some of the forms submitted by the carriers may be different for each universal service support mechanism, the Plan proposes to utilize a clearinghouse approach to bill carriers and process invoices.[165] The Plan further proposes that,

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[154] Plan at 12.

[155] *Id.*

[156] *Id.*

[157] Plan at 10.

[158] 47 C.F.R. § 69.620(b). Plan at 10.

[159] Plan at 10.

[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.* at 11.

[165] *Id.*

because unique systems were developed to implement each support mechanism, such systems would be retained and operated separately.[166] Furthermore, the Plan proposes that, because of the unique functions of each universal service support mechanism, the client support centers that currently exist for each support mechanism would continue to operate separately, at least for the short term.[167] Similarly, the Plan proposes that the process of ensuring the integrity of, and evaluating the progress of, each support mechanism would be done on a separate basis.[168]

57. *Websites.* SLC and RHCC currently operate separate websites. The Plan indicates that it may be more efficient to maintain one consolidated website.[169] Initially, however, to avoid cost, congestion, and community confusion, the Plan proposes to maintain separate websites for the schools and libraries support mechanism and the rural health care support mechanism.[170] Until such time that a unified website is established, the Plan proposes that each website would provide a link to the website of the other mechanism.[171]

58. *Employees.* The Plan proposes that the new USAC would have common programs for human resource administration, health insurance, pension, and compensation benefits.[172] In this regard, the Plan indicates that USAC would consult with the different committees and divisions to determine which of the existing programs is most appropriate for the unified entity or whether a new program should be implemented. [173] The Plan proposes that all current employees of USAC, SLC, and RHCC would be offered positions of generally equivalent responsibility by USAC.[174] The Plan further proposes that these employees would receive the same or comparable compensation and benefits, subject to any applicable Commission or congressional limitation.[175] In addition, to the extent SLC and RHCC have

[166] *Id.* at 12.

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] Plan at 9.

[173] *Id.*

[174] Plan, Appendix A-3 at 25.

[175] *Id.*

different personnel practices and benefits, any consolidation of these programs under the new USAC would attempt to preserve the value of such practices and benefits to the employees.[176]

B. Discussion

59. Congress has directed the Commission to have a single entity administer the schools and libraries and rural health care support mechanisms. We have reviewed the proposals set forth in the Plan to assess whether, where possible, corporate operations will be consolidated to eliminate duplicative functions. In those instances where the Plan proposes to maintain separate operations, we have evaluated whether such separate operations will further the goal of preserving the distinct missions of the four support mechanisms. We find that the functions that the Plan proposes to consolidate will improve the efficiency and effectiveness with which the universal service support mechanisms are administered. We likewise conclude that the retention of separate operations for certain functions that are unique to a particular support mechanism ensures that the administrative systems and expertise that SLC and RHCC have developed will be preserved in the revised administrative structure. Moreover, because the Plan proposes to consolidate most functions, we believe that this streamlined administrative structure will facilitate the Commission's oversight of universal service administration. Subject to the modifications and clarifications set forth below, we adopt the Plan's proposals for consolidating operations. Accordingly, we direct USAC, SLC, and RHCC to enter into a merger agreement that reflects the proposal set forth in the Plan, as modified and clarified herein.

60. The Plan suggests that it may be more efficient to have a consolidated USAC website, but initially proposes to retain the SLC and RHCC websites. The American Library Association questions the prudence of merging the websites at all, in light of SLC's and RHCC's different organizational approaches.[177] We find that the websites should be reorganized and consolidated. Blooston, Mordkofsky, Jackson & Dickens (Blooston) notes that currently there is no consistency as to where information regarding the universal service support mechanisms now may be found.[178] We conclude that a separate USAC website should be created and that the information now found on the SLC and RHCC websites should

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[176] *Id.*

[177] ALA comments at 5.

[178] Blooston comments at 4. Blooston notes that some information is available only on one website, while other information is duplicated on the SLC, RHCC, and NECA websites. We note that, although Blooston only addresses the issue of merging the SLC website into the NECA website, the comments are equally applicable to the RHCC website.

be merged into the USAC website.[179] We find that a single consolidated USAC website is consistent with our goal of eliminating duplicative functions, and that a consolidated website for all four universal service support mechanisms will be easier to utilize. Accordingly, we direct USAC to report to the Commission by December 31, 1998 the date by which it could consolidate the website. In the interim, as proposed in the Plan, we direct USAC to provide links among all the relevant websites.

61. We also direct USAC to submit to the Commission for approval, as suggested in the Plan and consistent with the Commission's rules,[180] a proposed method for allocating costs among the four support mechanisms by December 31, 1998. We approve of the Plan's proposal to retain common outside counsel for use by all divisions and committees. Outside counsel shall perform work only as directed by the USAC CEO. USAC may hire additional in-house counsel to perform work on its behalf if USAC determines that doing so would be more cost effective than retaining outside counsel to perform such work.

62. We adopt the Plan's proposal regarding merging the corporations. In implementing the merger, USAC may assume, where appropriate, SLC's and RHCC's contracts with employees and subcontractors. To the extent USAC determines that the recision or modification of certain contracts will result in efficiencies or other benefits, USAC may rescind or modify such contracts, in accordance with applicable law.

63. The American Library Association contends that it is unclear whether the Plan will improve efficiency or effectiveness.[181] As noted above, we will review USAC's performance after one year from the merger to assess whether USAC has succeeded in eliminating duplicative functions and whether it has succeeded in preserving the distinct missions of the schools and libraries and rural health care support mechanisms. As noted above, we also require USAC to submit an annual report by March 31 of each year detailing its activities and accomplishments for the prior year. We will continue to evaluate ways of achieving greater efficiency, effectiveness, and accountability in the administration of universal service.

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[179] Blooston notes, and we have verified, that the Uniform Resource Locator (URL) "www.usac.org" belongs to another organization. We do not believe that this is an impediment to establishing a USAC website.

[180] Plan, Appendix A-3 at 25; 47 C.F.R. § 54.701(f)(2).

[181] ALA comments at 4.

VI. PROCEDURES FOR REVIEW OF USAC DECISIONS

A. Background

64. The *July 15 Public Notice* proposed the following procedure for appealing USAC decisions to the Commission: An affected party would be permitted to file a petition for Commission review with the Bureau within sixty (60) days of an action taken by USAC. The Bureau would have delegated authority to rule on such petition and, if the Bureau took no action within sixty (60) days, USAC's decision would be deemed approved by the Bureau. As with other decisions made by the Bureau acting pursuant to its delegated authority, parties could seek Commission review of the Bureau's decision.[182] The Bureau would have the authority to review the decisions of USAC at any time on the Bureau's own motion. The Bureau would conduct *de novo* review of appeals from USAC decisions. If an application for discounted services or support is approved, and that approval is appealed to the Commission, the pendency of that appeal would not affect the eligibility of the applicant to receive discounted services, nor would it prevent reimbursement of carriers for discounted services provided to such applicants. The *July 15 Public Notice* proposed to limit the Bureau's review function solely to the review of issues that raise no novel questions of fact, law, or policy.

65. The *July 15 Public Notice* also sought comment on whether a party affected by a decision made by USAC division staff should be required to seek relief from the appropriate committee of the Board before filing an appeal with the Commission. Similarly, the *July 15 Public Notice* sought comment on whether the affected party should be required to seek relief from the full USAC Board before filing an appeal with the Commission if the relief sought pertains to a matter that is solely within the jurisdiction of the full USAC Board. The Plan does not propose a process for Commission review of USAC decisions.

B. Discussion

66. We agree with commenters that affected parties should have the right to appeal USAC division, committee, and Board decisions directly to the Commission. The majority of commenters opposes requiring affected parties to seek review of USAC division decisions from the appropriate USAC Committee of the Board or the full USAC Board before filing an appeal with the Commission.[183] Commenters generally maintain that direct appeal to the

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[182] *See* 47 C.F.R. § 1.115.

[183] *See, e.g.*, BellSouth comments at 7; MCI comments at 2; Florida Department of Management Services comments at 3-4; US West comments at 12; NTCA reply comments at 3. *Cf.* GTE comments at 6 ("method for dispute resolution should be adopted in which the discontented applicant or Service Provider, upon receipt of a division decision, would first submit its complaint to the USAC Board").

Commission is necessary to ensure adequate oversight of USAC's operations.[184] Commenters further argue that review by USAC in the first instance would be burdensome and would cause unnecessary delays in obtaining a final decision.[185] We find that Commission oversight will be strengthened by an appeals process that ensures that matters are brought promptly to the Commission. Requiring affected parties to seek review from a Committee of the Board or the full USAC Board in the first instance might cause unnecessary delay in the appeals process without, as MCI notes, any identifiable benefit.[186]

67. We also agree with USAC and SLC that affected parties should be encouraged to bring issues to the attention of the division head or the USAC CEO to determine whether the matter can be handled without a formal appeal to the Commission.[187] We anticipate that, under certain circumstances, a party may prefer to seek redress initially from the appropriate Committee of the Board or the full USAC Board. Accordingly, we conclude that affected parties should have the option of seeking redress from a Committee of the Board or, if the matter concerns a billing, collection, or disbursement matter that falls outside of the jurisdiction of a particular committee, from the full USAC Board. We encourage parties to seek redress in the first instance from Committees of the Board for matters that involve straightforward application of the Commission's rules. To the extent that affected parties can obtain prompt resolution of such disputes, support mechanism participants will be better served and limited Commission resources will be conserved. Although Intermedia recommends excluding USAC internal administrative decisions from the appeal process, we do not believe that any benefits would be realized from limiting the types of decisions that may be appealed to the Commission. We believe that the option of seeking redress from USAC or the Commission addresses BellSouth's concerns regarding the due process guarantees of the APA.[188]

68. As proposed in the *July 15 Public Notice*, we delegate to the Bureau the

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[184] *See, e.g.*, BellSouth comments at 7; US WEST comments at 12; Ameritech Reply comments at 2.

[185] *See, e.g.*, MCI comments at 2; *see also* US WEST at 12.

[186] MCI comments at 2.

[187] USAC and SLC reply comments at 3.

[188] We note that BellSouth does not elaborate on its claim that the proposed appeals process violates the due process guarantees of the APA, failing even to cite the provision of the APA that it believes will be violated. BellSouth merely stated in the introduction portion of its comments that the appeals process "arguably violates due process guarantees of the Administrative Procedures Act." BellSouth at 2. In any event, we believe that the appeals process adopted here, which provides affected parties the option of appealing to a Committee of the Board or the Commission, does not raise any due process concerns.

authority to rule on petitions for review of USAC division, committee, or Board decisions that do not raise novel questions of fact, law, or policy. This delegation to the Bureau is consistent with the Commission's authority under section 5(c) of the Act[189] to delegate particular functions to staff in the first instance, subject to the filing of applications for review with the Commission.[190] Petitions that raise novel questions of fact, law, or policy shall be brought before the full Commission. As with other decisions made by the Bureau acting pursuant to its delegated authority, parties may seek Commission review of any Bureau decision. The Bureau also would have the authority to review the decisions of USAC at any time on its own motion.[191] Contrary to GTE's claims that Bureau involvement is unnecessary and will result in delay,[192] we believe that granting the Bureau delegated authority to review petitions that do not raise novel questions of fact, law, or policy will facilitate prompt resolution of routine or settled matters.

69. Furthermore, consistent with the Commission's ultimate responsibility over the universal service support mechanisms, we conclude that USAC decisions, whether considered by the Bureau or the Commission, should be subject to *de novo* review. Accordingly, we decline to adopt USAC's and SLC's recommendation that the Commission uphold USAC decisions without considering the merits of the appeal if the Commission finds that USAC has not exceeded its authority and has acted consistently with the Commission's rules.[193]

70. In response to commenters' requests for a streamlined appeals process,[194] we conclude that an affected party will have thirty (30) days to file an appeal of a USAC decision.[195] This thirty (30) day period will begin to run from the date of issuance of a

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[189] 47 U.S.C. § 5(c).

[190] 47 U.S.C. § 5(c)(4); 47 C.F.R. § 1.115.

[191] 47 U.S.C. § 403.

[192] GTE comments at 6.

[193] USAC and SLC reply comments at 3.

[194] *See, e.g.*, GTE comments at 5 (claiming too much time elapses during each phase of the process).

[195] We note that the Commonwealth of Virginia suggests that "the appeals process used for procurement in states could eliminate the need for another federal remedy." Virginia comments at 3. Although the Bureau sought comment in the *July 15 Public Notice* on whether state procurement rules or other state experiences may serve as useful models, the Commission cannot rely on an appeal procedure under a state procurement process to resolve matters regarding federal universal service support mechanisms. We also note that the Florida Department of Management Services claims that the Commission's implementation of federal universal service should be consistent with state procurement practices. This issue is outside the scope of the *July 15 Public*

USAC decision. The filing of an appeal to a Committee of the Board or the full Board will toll the time period for filing an appeal with the Commission.[196] For matters that are not new or novel, and may be decided by the Bureau, we further find that we should establish a streamlined process for review. If the Bureau takes no action within ninety (90) days upon an appeal properly before it, USAC's decision will be deemed approved. We are confident that a 90-day period will provide an adequate opportunity for review, in most cases, and the Bureau, within that 90-day period, may take action to extend the period of review. For appeals that are properly before the Commission, a written decision will be issued within 90 days unless the Commission takes action to extend the period for review; under no circumstances will an appeal before the full Commission be deemed approved as a result of inaction on the part of the Commission. We expect that the Bureau and the Commission will act promptly to resolve appeals of USAC decisions. Based on this expectation, we do not adopt BellSouth's suggestion that the Commission adopt a mechanism similar to the accelerated review process adopted for complaints filed under section 208 of the Act.[197]

71. To facilitate prompt resolution by the Commission of appeals of USAC decisions, we also adopt specific filing requirements for such petitions. The appellant must state specifically its interest in the matter presented for review. The appellant also must provide the Commission with a full statement of relevant, material facts with supporting affidavits and documentation. In addition, the appellant must state concisely the question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision. The appellant also must state the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought. If an appellant alleges prohibited conduct by a third party, the appellant shall serve a copy of the appeal on such third party, who shall have an opportunity to file an opposition.[198] Similarly, appellants shall serve on USAC a copy of the appeal of a USAC decision filed with the

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Notice and thus will not be considered here. Furthermore, this issue is being addressed in response to a Motion for Declaratory Ruling or in the Alternative, a Petition for Waiver, of Existing Contract Rule, filed by Florida Department of Management Services on May 11, 1998. *See* Florida Department of Management Services Files Motion for Declaratory Ruling or, in the Alternative, Petition for Waiver, of Existing Contract Rule, *Public Notice* DA 98-977 (rel. May 21, 1998).

[196] Where the time period for filing an appeal with the Commission has been tolled, an affected party will have thirty (30) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

[197] 47 U.S.C. § 208. BellSouth comments at 8, citing to Implementation of Telecommunications Act of 1996 and Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, *Second Report and Order*, CC Docket No. 96-238 (rel. July 14, 1998).

[198] Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 C.F.R. § 1.45.

Commission. We encourage USAC to file comments setting forth USAC's position on the issues raised in the appeal. We believe that USAC's comments may aid the Commission in understanding the nature of the disputed issues and facilitate a timely resolution of the matter. We decline to adopt Weisiger's recommendation that the applications for discounted services provide information regarding beneficiaries' right to seek review of USAC decisions.[199]

72. We note that BellSouth questions whether the Commission has jurisdiction to adjudicate a dispute involving a non-telecommunications carrier. We find that the Commission has the authority to review USAC decisions, regardless of the identity of the parties, because USAC is administering the universal service support mechanisms for the Commission, subject to Commission rules and oversight.[200]

73. We decline to adopt SBC's proposal, supported by GTE, NTCA, and Ameritech, that the appeal procedures should apply to decisions previously rendered by USAC, SLC, and RHCC.[201] Specifically, SBC proposes that affected parties be granted sixty (60) days from the effective date of our rules to appeal prior USAC, SLC, or RHCC decisions.[202] Parties seeking redress from previously issued decisions of USAC, SLC, and RHCC have not been prevented from appealing those decisions to the Commission under existing Commission procedures.[203] Indeed, several parties have filed appeals with the Commission.[204] Thus, we conclude that retroactive application of these appeal procedures is not warranted.

74. The *July 15 Public Notice* also proposed that, if an application for discounted services or support is approved, and that approval is appealed to the Commission, the pendency of that appeal would not affect the eligibility of the applicant to receive discounted services, nor would it prevent reimbursement of service providers for discounted services

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[199] Weisiger comments at 8.

[200] 47 U.S.C. §§ 254 and 4(i) of the Act. *See, e.g., Universal Order*, 12 FCC Rcd at 9084-9090, for a discussion of the eligibility of non-telecommunications carriers to receive support under the universal service support mechanisms.

[201] SBC comments at 3-4; Ameritech reply comments at 2; GTE reply comments at 7; NTCA reply comments at 3.

[202] SBC comments at 3-4.

[203] *See* 47 C.F.R. § 1.41.

[204] *See* Letter to Magalie Roman Salas from Integrated Systems & Internet Solutions, Inc., dated May 14, 1998. *See also* Broadband Networks, Inc., Objection to Application, CC Docket No. 96-45 (dated April 24, 1998).

provided to such applicants. We conclude that, until the Bureau or the full Commission has resolved an appeal of a USAC decision, an applicant will not be permitted to receive discounted services and service providers will not be permitted to receive reimbursement for discounted services provided to such applicants.[205] We believe that withholding support during the pendency of an appeal will reduce the likelihood that support is disbursed in error.[206] We further find that, because requests for review of USAC decisions that are properly before the Bureau will be deemed approved if the Bureau takes no action within 90 days, and because the full Commission is committed to issuing decisions within 90 days, parties will have limited ability to delay support and discounts for a substantial period of time merely by filing an appeal.

VII. IMPLEMENTATION ISSUES

A. Submission and Approval of Merger Documents

75. Consistent with our adoption of the Plan as modified herein, we direct USAC, SLC, and RHCC to submit draft merger documents to the Commission by December 1, 1998. We also direct USAC to submit to the Commission by December 1, 1998, draft revised by-laws and articles of incorporation. The Commission delegates to the Bureau the authority to review and approve the merger documents, revised by-laws and revised articles of incorporation.[207] Such documents should be consistent with the requirements of this Order and consistent with principles and requirements of Delaware state law. The Bureau will indicate its approval of the documents in a public notice. Upon consummation of the merger and the filing of the revised by-laws, SLC and RHCC shall take all steps necessary to dissolve SLC and RHCC in accordance with Delaware state law.

B. Effective Date of Rules

76. In this Order, the Commission directs that SLC and RHCC merge into USAC as the single entity responsible for administering the universal service mechanisms by January 1, 1999. To ensure that USAC is able to meet the January 1, 1999 deadline, the Commission directs USAC to submit to the Commission by December 1, 1998 USAC's draft merger

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[205] *See* BellSouth comments at 8 (contending that affected parties should have the ability to appeal USAC decisions to the Commission prior to the disbursement of funds); *see also* GTE comments at 7 (arguing that reimbursements to carriers should never be withheld pending resolution of an appeal).

[206] The Commission intends to issue a further notice of proposed rulemaking seeking comment on procedures for recovering universal service support that is determined to have been disbursed erroneously.

[207] 47 C.F.R. § 0.291.

documents and draft revised by-laws. Thus, we make this requirement effective December 1, 1998, which may occur within fewer than thirty (30) days after publication in the Federal Register of the rules adopted in this Order. In this Order, we also adopt rules that will govern USAC following the required merger. Accordingly, these rules must take effect upon the required consummation of the merger on January 1, 1999, which may occur fewer than thirty (30) days after publication in the Federal Register of the rules adopted in this Order. These actions are necessary to ensure completion of the merger by the January 1, 1999 deadline that the Commission proposed in the *Report to Congress* in an effort to respond promptly to Congress's directive that the Commission establish a single entity to administer universal service. In addition, the parties required to take these actions -- SLC, RHCC, and USAC -- will have actual notice of their obligations when the Commission adopts this Order. Accordingly, we find good cause to depart in the manner described above from the general requirement of 5 U.S.C. § 553(d) that final rules take effect not less than thirty (30) days after their publication in the Federal Register.

VIII. FINAL REGULATORY FLEXIBILITY ANALYSIS

77. The Regulatory Flexibility Act (RFA)[208] requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[209] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[210] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[211] This regulatory flexibility certification supplements our prior certifications and analyses in this proceeding. The Commission will send a copy of this Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[212] In addition, this Order and certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the

[208] The Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*, was amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), Title II of the Contract with American Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

[209] 5 U.S.C. § 605(b).

[210] *Id.* § 601(6).

[211] *Id.* § 601(4).

[212] *See id.* § 801(a)(1)(A).

Federal Register.[213]

78. This Order directs the merger of SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms.[214] In addition, we adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission, including the requirements for filing review petitions with the Commission.[215] Pursuant to the RFA, and as described below, we certify that these actions will not have a significant economic impact on a substantial number of small entities.

79. Regarding the subject merger, in the *NECA Order* the Commission directed NECA, as a condition of its service as temporary Administrator of the universal service support mechanisms, to create an independent subsidiary, USAC, to administer temporarily certain aspects of the universal service support mechanisms and to establish SLC and RHCC to administer specific aspects of the universal service mechanisms for schools and libraries and rural health care providers.[216] In that order, the Commission also concluded that NECA is not a small organization within the meaning of the RFA, finding that NECA is a non-profit association that was created to administer the Commission's interstate access tariff and revenue distribution processes.[217] On this basis, the Commission certified pursuant to the RFA that the rules adopted in the *NECA Order* would not have a significant economic impact on a substantial number of small entities.[218]

80. In the *July 15 Public Notice*, the Bureau sought comment on the proposed plan to merge SLC and RHCC into USAC as the single entity responsible for the administration of the universal service support mechanisms for schools and libraries and rural health care providers. For the reasons stated in the *NECA Order*, the Bureau found that NECA is not a small organization within the meaning of the RFA. Similarly, USAC, as a wholly-owned, non-profit subsidiary of NECA, is not a small organization. SLC and RHCC are non-profit

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[213] *See id.* § 605(b).

[214] *See generally supra* Sections IV, V, and VII.

[215] *See generally supra* Section VI.

[216] *NECA Order*, 12 FCC Rcd at 18444-45.

[217] *Id. See also* 47 C.F.R. §§ 69.601, 69.603. NECA subsequently assumed responsibility for administering the existing universal service fund (47 C.F.R. §§ 69.116, 69.603), the Lifeline Assistance program (47 C.F.R. §§ 69.117, 69.603), the Long Term Support program (47 C.F.R. §§ 69.2(y), 69.612), and the Telecommunications Relay Services fund (47 C.F.R. § 64.604(c)(4)(iii)).

[218] *NECA Order*, 12 FCC Rcd at 18444-45.

corporations created by NECA as a condition of its service as temporary Administrator. The Bureau tentatively certified that, even if NECA, USAC, SLC, and RHCC are small entities, the reorganization of SLC, RHCC, and USAC would affect directly only those four entities and thus would not have a direct, significant economic impact on a substantial number of small entities. The Bureau requested comment on this matter.

81. Under the rules adopted in this Order, USAC will serve as the single entity responsible for administering all of the universal service support mechanisms as of January 1, 1999. The Commission received no comments requesting that we modify our previous certification that the reorganization of SLC, RHCC, and USAC will not have a significant economic impact on a substantial number of small entities. We hereby certify pursuant to the RFA, 5 U.S.C. § 605(b), that the rules adopted in this Order directing the merger of SLC and RHCC into USAC as the permanent Administrator of the universal service support mechanisms will not have a significant economic impact on a substantial number of small entities.

82. Regarding the adoption of specific procedures under which administrative decisions made by USAC will be reviewable by the Commission, we note that, in the Final Regulatory Flexibility Analysis[219] to the *Universal Service Order*, we described and estimated the number of small entities that might be affected significantly by the new universal service rules, including the rule requiring telecommunications carriers and other entities to contribute to the universal service support mechanisms.[220] These entities included telephone companies and similar entities, including wireless entities; cable system operators and similar entities, including DBS and international entities; municipalities; rural health care providers; schools; and libraries.[221] The rules adopted here, which set forth the procedures by which affected parties may seek Commission review of administrative decisions made by USAC, will apply to those same telecommunications carriers and entities. In the *July 15 Public Notice*, the Bureau tentatively certified that the rule amendments under consideration would not have a significant economic impact on a substantial number of small entities, noting that the rules, which would afford entities multiple options in seeking review, would likely have a beneficial impact on such entities. The Bureau requested comment specifically on this tentative conclusion. No such comments were filed.

83. In this Order, the Commission adopts, *inter alia*, procedures under which affected parties may appeal USAC division, committee, and Board decisions directly to the

[219] *See generally* 5 U.S.C. § 604.

[220] *Universal Service Order*, 12 FCC Rcd at 9219-9260.

[221] *Universal Service Order*, 12 FCC Rcd at 9227-43.

Commission. This decision affords parties options for seeking review of USAC decisions and as a result, the economic effect of such change should, if anything, be beneficial. In addition, we adopt specific requirements for filing review petitions with the Commission under these rules. We find that the filing requirements we adopt are merely procedural in nature and are no more onerous than other, similar filing requirements in the Commission's rules; as such they will not result in a significant economic impact on entities that choose to file under the rules. We therefore certify that the rules we adopt to afford direct review of USAC decisions by the Commission, including the requirements for filing review petitions with the Commission, will not have a significant economic impact on a substantial number of small entities.

IX. ORDERING CLAUSES

84. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, and section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, the THIRD REPORT AND ORDER IN CC DOCKET NO. 97-21, FOURTH ORDER ON RECONSIDERATION IN CC DOCKET NO. 97-21 and EIGHTH ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-45 IS ADOPTED.

85. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, and section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, Part 54 of the Commission's rules, 47 C.F.R. Part 54, and Part 69 of the Commission's rules, 47 C.F.R. Part 69, ARE AMENDED as set forth in Appendix A attached hereto.

86. IT IS FURTHER ORDERED that, because the Commission has found good cause, this Order and 47 C.F.R. § 54.701, as amended and set forth in Appendix A, ARE EFFECTIVE on December 1, 1998, which may be less than thirty (30) days after publication in the Federal Register.

87. IT IS FURTHER ORDERED that the merger of SLC and RHCC into USAC shall be consummated by January 1, 1999.

88. IT IS FURTHER ORDERED that, because the Commission has found good cause, except as otherwise provided herein, the rule changes set forth in Appendix A ARE EFFECTIVE on January 1, 1999, which may be less than thirty (30) days after publication in

the Federal Register.

89. IT IS FURTHER ORDERED that, upon consummation of the merger of SLC and RHCC into USAC, SLC and RHCC shall be dissolved, in accordance with applicable state law.

90. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

91. IT IS FURTHER ORDERED that the information collections contained in sections 74.703(c) and 54.721 of the Commission's rules, as set forth in Appendix A, will become effective following approval from the Office of Management and Budget.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

Appendix A -- Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 54 -- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 USC Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.5 Terms and definitions.

2. In section 54.5, remove the terms "High Cost and Low Income Committee," "Rural Health Care Corporation," and "Schools and Libraries Corporation" and the definitions of those terms; revise the definition of the term "Administrator"; add the definition of the term "website" as follows:

The term "Administrator" shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

The term "website" shall refer to any websites operated by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost mechanism, and the low income mechanism.

§ 54.504 Requests for services.

3. Remove the words "Schools and Libraries Corporation" in sections 54.504(b)(1), (b)(2)(vii), (b)(3), and (c) and add, in their place, the word "Administrator." Revise paragraph (b)(4) to read as follows:

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(b) ***

(4) After posting on the Administrator's website an eligible school's, library's, or consortium's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the

Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

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§ 54.505 Discounts.

4. Remove the words "Schools and Libraries Corporation" in sections 54.505(b)(3) and (c) and add, in their place, the word "Administrator."

§ 54.507 Cap.

5. Remove the words "Schools and Libraries Corporation" in sections 54.507(c), (e)-(f), the introductory text to (g), (g)(1) and add, in their place, the word "Administrator"; revise sections 54.507(c) and (g)(2)(i) and (iv) to read as follows:

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(c) Requests. Funds shall be available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come-first-served basis, with requests accepted beginning on the first of July prior to each funding year. The Administrator shall maintain on the Administrator's website a running tally of the funds already committed for the existing funding year. The Administrator shall implement an initial filing period that treats all schools and libraries filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator. The Administrator may implement such additional filing periods as it deems necessary.

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(g) ***

(2) ***

(i) The Administrator or the Administrator's subcontractor shall post a message on the Administrator's website, notify the Commission, and take reasonable steps to notify the educational and library communities that commitments for the remaining $250 million of support will only be made to the most economically disadvantaged schools and libraries (those in the two most disadvantaged categories) for the next 30 days or the remainder of the funding year, whichever is shorter.

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(iv) After all requests submitted by schools and libraries described in paragraphs (g)(2) and (g)(3) of this section during the 30-day period have been met, the

Administrator shall allocate the remaining available funds to all other eligible schools and libraries in the order in which their requests have been received by the Administrator, until the $250 million is exhausted or the funding year ends.

§ 54.509 Adjustments to the discount matrix.

6. Remove the words "Schools and Libraries Corporation" in section 54.509(b) and add, in their place, the word "Administrator" and revise section 54.509 to read as follows:

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(c) Remaining funds. If funds remain under the cap at the end of the funding year in which discounts have been reduced below those set in the matrices above, the Administrator shall consult with the Commission to establish the best way to distribute those funds.

§ 54.511 Ordering services.

7. Remove the words "Schools and Libraries Corporation" in section 54.511(c)(3) and add, in their place, the word "Administrator."

§ 54.516 Auditing.

8. Remove the words "Schools and Libraries Corporation" in section 54.516(b) and add, in their place, the word "Administrator."

§ 54.603 Competitive bid requirements.

9. Remove the words "Rural Health Care Corporation" in sections 54.603(a)(1)-(5) and add, in their place, the word "Administrator."

§ 54.604 Existing contracts.

10. Remove the words "Rural Health Care Corporation" in section 54.604(c) and add, in their place, the word "Administrator."

§ 54.605 Determining the urban rate.

11. Remove the words "Rural Health Care Corporation" in section 54.605(e) and add, in their place, the word "Administrator."

§ 54.609 Calculating support.

12. Remove the words "Rural Health Care Corporation" in section 54.609(b) and add, in their place, the word "Administrator."

§ 54.619 Audit program.

13. Remove the words "Rural Health Care Corporation" in sections 54.619(b) and (d) and add, in their place, the word "Administrator."

§ 54.623 Cap.

14. Remove the words "Rural Health Care Corporation" in sections 54.623(c), (e)-(f) and add, in their place, the word "Administrator."

§ 54.625 Support for services beyond the maximum supported distance for rural health care providers.

15. Remove the words "Rural Health Care Corporation" in section 54.625(a) and add, in their place, the word "Administrator."

Subpart H - Administration

Section	
54.701	Administrator of universal service support mechanisms.
54.702	Administrator's functions and responsibilities.
54.703	Administrator's Board of Directors.
54.704	Administrator's Chief Executive Officer.
54.705	Committees of the Administrator's Board of Directors.
54.706	Contributions.
54.707	Audit Controls
54.708	*De minimis* Exemption.
54.709	Computation of required contributions to universal service support mechanisms.
54.711	Contributor reporting requirements.
54.713	Contributor's failure to report to contribute.
54.715	Administrative expenses of the Administrator.
54.717	Audits of the Administrator.

§ 54.701 Administrator of universal service support mechanisms.

16. Revise section 54.701 to read as follows:

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the federal universal service support mechanisms, subject to a review after one year by the Federal Communications Commission to determine that the Administrator is administering the universal service support mechanisms in an efficient, effective, and competitively neutral manner.

(b) The Schools and Libraries Corporation and the Rural Health Care Corporation shall merge into the Universal Service Administrative Company by January 1, 1999; provided, however, that the merger shall not take place until the Common Carrier Bureau, acting pursuant to delegated authority, has approved the merger documents, the amended by-laws, and the amended articles of incorporation, as set forth in paragraphs (c) and (d) of this section.

(c) By December 1, 1998, the Schools and Libraries Corporation, the Rural Health Care Corporation and the Universal Service Administrative Company shall file with the Federal Communications Commission draft copies of all documents necessary to effectuate the merger.

(d) By December 1, 1998, the Universal Service Administrative Company shall file with the Federal Communications Commission draft copies of amended by-laws and amended articles of incorporation.

(e) Upon consummation of the merger of the Schools and Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, the Schools and Libraries Corporation and the Rural Health Care Corporation shall take all steps necessary to dissolve such corporations.

(f) The Administrator shall establish a nineteen (19) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705: (i) the Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism; (ii) the Rural Health Care Committee, which shall oversee the rural health care support mechanism; and (iii) the High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism. The Board of Directors shall not modify substantially the power or authority of the Committees of the Board without prior approval from the Federal Communications Commission.

(g) The Administrator shall establish three divisions: (i) the Schools and Libraries Division, which shall perform duties and functions in connection with the schools and libraries support mechanism under the direction of the Schools and Libraries Committee of the Board, as set forth in § 54.705(a); (ii) the Rural Health Care Division, which shall perform duties and functions in connection with the rural health care support mechanism under the direction of the Rural Health Care Committee of the Board, as set forth in § 54.705(b); and (iii) the High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost and low income support mechanism under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c). As directed by the Committees of the Board set forth in § 54.705, these divisions shall perform the duties and functions unique to their respective support mechanisms.

(h) The Administrator shall be managed by a Chief Executive Officer, as set forth in § 54.704. The Chief Executive Officer shall serve on the Committees of the Board established in § 54.705.

§ 54.702 Administrator's functions and responsibilities.

17. Add a new section 54.702 to read as follows:

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms.

(e) The Administrator shall maintain books of account separate from those of the National Exchange Carrier Association, of which the Administrator is an independent subsidiary. The Administrator's books of account shall be maintained in accordance with generally accepted accounting principles. The Administrator may borrow start up funds from the National

Exchange Carrier Association. Such fund may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(f) Pursuant to its responsibility for billing and collecting contributions, the Administrator shall compare periodically information collected by the administrator of the TRS Fund from TRS Fund Worksheets with information submitted by contributors on Universal Service Worksheets to verify the accuracy of information submitted on Universal Service Worksheets. When performing a comparison of contributor information as provided by this subsection, the Administrator must undertake company-by-company comparisons for all entities filing Universal Service and TRS Fund Worksheets.

(g) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers.

(h) The Administrator shall file with the Commission and Congress an annual report by March 31 of each year. The report shall detail the Administrator's operations, activities, and accomplishments for the prior year, including information about participation in each of the universal service support mechanisms and administrative action intended to prevent waste, fraud, and abuse. The report also shall include an assessment of subcontractors' performance, and an itemization of monthly administrative costs that shall include all expenses, receipts, and payments associated with the administration of the universal service support programs. The Administrator shall consult each year with Commission staff to determine the scope and content of the annual report.

(i) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high cost and insular areas.

(j) Information based on the Administrator's reports will be made public by the Commission at least once a year as part of a Monitoring Report.

(k) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the universal service support programs.

(l) Pursuant to § 64.903 of this chapter, the Administrator shall file with the Commission a cost allocation manual (CAM) that describes the accounts and procedures the Administrator will use to allocate the shared costs of administering the universal service support mechanisms and its other operations.

(m) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanism, if its participation in administering the universal service support mechanisms ends.

(n) If its participation in administering the universal service support mechanisms ends, the Administrator shall be subject to close-out audits at the end of its term.

§ 54.703 Contributions

18. Remove section 54.703.

§ 54.703 Administrator's Board of Directors.

19. Add a new section 54.703 to read as follows:

§ 54.703 The Administrator's Board of Directors.

(a) The Administrator shall have a Board of Directors separate from the Board of Directors of the National Exchange Carrier Association. The National Exchange Carrier Association's Board of Directors shall be prohibited from participating in the functions of the Administrator.

(b) *Board Composition.* The independent subsidiary's Board of Directors shall consist of nineteen (19) directors:

(1) Three directors shall represent incumbent local exchange carriers, with one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of $40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of $40 million or less;

(2) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than $3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of $3 billion or less;

(3) One director shall represent commercial mobile radio service (CMRS) providers;

(4) One director shall represent competitive local exchange carriers;

(5) One director shall represent cable operators;

(6) One director shall represent information service providers;

(7) Three directors shall represent schools that are eligible to receive discounts pursuant to § 54.501 of this chapter;

(8) One director shall represent libraries that are eligible to receive discounts pursuant to § 54.501 of this chapter;

(9) Two directors shall represent rural health care providers that are eligible to receive supported services pursuant to § 54.601 of this chapter;

(10) One director shall represent low-income consumers;

(11) One director shall represent state telecommunications regulators;

(12) One director shall represent state consumer advocates; and

(13) The Chief Executive Officer of the Administrator.

(c) *Selection Process for Board of Directors*

(1) Sixty (60) days prior to the expiration of a director's term, the industry or non-industry group that is represented by such director on the Administrator's Board of Directors, as specified in paragraph (b) of this section, shall nominate by consensus a new director. The industry or non-industry group shall submit the name of its nominee for a seat on the Administrator's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission. Only members of the industry or non-industry group that a Board member will represent may submit a nomination for that position.

(2) The name of an industry or non-industry group's nominee shall be filed with Office of the Secretary of the Federal Communications Commission in accordance with Part 1 of the rules of the Federal Communications Commission, 47 CFR 1. The document nominating a candidate shall be captioned "In the matter of: Nomination for Universal Service Administrator's Board of Directors" and shall reference FCC Docket Nos. 97-21 and 96-45. Each nomination shall specify the position on the Board of Directors for which such nomination is submitted. Two copies of the document nominating a candidate shall be submitted to the Common Carrier Bureau's Accounting Policy Division.

(3) The Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and select each director of the Administrator's Board of Directors, as each director's term expires pursuant to paragraph (d) of this section. If an industry or non-industry group does not reach consensus on a nominee or fails to submit a nomination for a position on the Administrator's Board of Directors, the Chairman of the Federal Communications Commission shall select an individual to represent such group on the Administrator's Board of Directors.

(d) *Board Member Terms.* The directors on the Administrator's Board shall be appointed for three-year terms, except that the Chief Executive Officer shall be a permanent member of the Board. Board member terms shall run from January 1 of the first year of the term to December 31 of the third year of the term, except that, for purposes of the term beginning on January 1, 1999, the term of six directors shall expire on December 31, 2000, the terms of another six directors on December 31, 2001, and the term of the remaining six directors on

December 31, 2002. Directors may be reappointed for subsequent terms pursuant to the initial nomination and appointment process described in paragraph (c) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the Administrator will notify the Common Carrier Bureau of such vacancy, and a successor will be chosen pursuant to the nomination and appointment process described in paragraph (c) of this section.

(e) All meetings of the Administrator's Board of Directors shall be open to the public and held in Washington, D.C.

(f) Each member of the Administrator's Board of Directors shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the Administrator's Board of Directors.

§ 54.704 Administrator's Chief Executive Officer.

20. Add a new section 54.704 to read as follows:

§ 54.704 The Administrator's Chief Executive Officer.

(a) *Chief Executive Officer's Functions.*

(1) The Chief Executive Officer shall have management responsibility for the administration of the federal universal service support mechanisms.

(2) The Chief Executive Officer shall have management responsibility for all employees of the Universal Service Administrative Company. The Chief Executive Officer may delegate such responsibility to heads of the divisions established in § 54.701(g) .

(3) The Chief Executive Officer shall serve on the Administrator's Board of Directors as set forth in § 54.703(b) and on the Committees of the Board established under § 54.705.

(b) *Selection Process for the Chief Executive Officer.*

(1) The members of the Board of Directors of the Administrator shall nominate by consensus a Chief Executive Officer. The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission.

(2) The Chairman of the Federal Communications Commission shall review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairman's

approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairman of the Federal Communications Commission shall select a Chief Executive Officer.

§ 54.705 *De Minimis* Exemption.

21. Remove section 54.705.

§ 54. 705 Committees of the Administrator's Board of Directors.

22. Add a new section 54.705 to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a) *Schools and Libraries Committee.*

(1) *Committee Functions.* The Schools and Libraries Committee shall oversee the administration of the schools and libraries support mechanism by the Schools and Libraries Division. The Schools and Libraries Committee shall have the authority to make decisions concerning: (i) how the Administrator projects demand for the schools and libraries support mechanism; (ii) development of applications and associated instructions as needed for the schools and libraries support mechanism; (iii) administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; (iv) performance of outreach and education functions; (v) review of bills for services that are submitted by schools and libraries; (vi) monitoring demand for the purpose of determining when the $2 billion trigger has been reached; (vii) implementation of the rules of priority in accordance with § 54.507(g) of this chapter; (viii) review and certification of technology plans when a state agency has indicated that it will not be able to review such plans within a reasonable time; (ix) the classification of schools and libraries as urban or rural and the use of the discount matrix established in § 54.505(c) of this chapter to set the discount rate to be applied to services purchased by eligible schools and libraries; (x) performance of audits of beneficiaries under the schools and libraries support mechanism; and (xi) development and implementation of other functions unique to the schools and libraries support mechanism.

(2) *Committee Composition.* The Schools and Libraries Committee shall consist of the following members of the Administrator's Board of Directors: (i) three school representatives; (ii) one library representative; (iii) one service provider representative; (iv) one at-large representative elected by the Administrator's Board of Directors; and (v) the

Administrator's Chief Executive Officer.

(b) *Rural Health Care Committee.*

(1) *Committee Functions.* The Rural Health Care Committee shall oversee the administration of the rural health care support mechanism by the Rural Health Care Division. The Rural Health Care Committee shall have authority to make decisions concerning: (i) how the Administrator projects demand for the rural health care support mechanism; (ii) development of applications and associated instructions as needed for the rural health care support mechanism; (iii) administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; (iv) calculation of support levels under § 54.609; (v) performance of outreach and education functions; (vi) review of bills for services that are submitted by rural health care providers; (vii) monitoring demand for the purpose of determining when the $400 million cap has been reached; (viii) performance of audits of beneficiaries under the rural health care support mechanism; and (ix) development and implementation of other functions unique to the rural health care support mechanism.

(2) *Committee Composition.* The Rural Health Care Committee shall consist of the following members of the Administrator's Board of Directors: (i) two rural health care representatives; (ii) one service provider representative; (iii) two at-large representatives elected by the Administrator's Board of Directors; one state telecommunications regulator, one state consumer advocate, and the Administrator's Chief Executive Officer.

(c) *High Cost and Low Income Committee.*

(1) *Committee Functions.* The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms by the High Cost and Low Income Division. The High Cost and Low Income Committee shall have the authority to make decisions concerning: (i) how the Administrator projects demand for the high cost and low income support mechanisms; (ii) development of applications and associated instructions as needed for the high cost and low income support mechanisms; (iii) administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; (iv) performance of audits of beneficiaries under the high cost and low income support mechanisms; and (v) development and implementation of other functions unique to the high cost and low income support mechanisms.

(2) *Committee Composition.* The High Cost and Low Income Committee shall consist of the following members of the Administrator's Board of Directors: (i) one low income representative; (ii) one state telecommunications regulator; (iii) one state consumer advocate;

(iv) two incumbent local exchange carrier representatives (one shall represent rural telephone companies, as that term is defined in 47 USC 153(37) and one shall represent non-rural telephone companies); (v) one interexchange carrier representative; (vi) one competing local exchange carrier representative; (vii) one commercial mobile radio service representative; and (viii) the Administrator's Chief Executive Officer.

(d) *Binding Authority of Committees of the Board.*

(1) Any action taken by the Committees of the Board established in paragraphs (a)-(c) of this section shall be binding on the Board of Directors of the Administrator, unless such action is presented for review to the Board by the Administrator's Chief Executive Officer and the Board disapproves of such action by a two-thirds vote of a quorum of directors, as defined in the Administrator's by-laws.

(2) The budgets prepared by each Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budgets prepared by the Committees of the Board unless such modification is approved by a two-thirds vote of a quorum of the Board, as defined in the Administrator's by-laws.

§ 54.706 Contributions.

23. Add a new section 54.706 to read as follows:

§ 54.706 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support programs. Interstate telecommunications include, but are not limited to:
(1) Cellular telephone and paging services;
(2) Mobile radio services;
(3) Operator services;
(4) Personal communications services (PCS);
(5) Access to interexchange service;
(6) Special access service;
(7) WATS;
(8) Toll-free service;
(9) 900 service;
(10) Message telephone service (MTS);
(11) Private line service;
(12) Telex;

(13) Telegraph;
(14) Video services;
(15) Satellite service;
(16) Resale of interstate services; and
(17) Payphone services.

(b) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for eligible schools, libraries, and health care providers on the basis of its interstate, intrastate, and international end-user telecommunications revenues. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

(c) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for high cost, rural and insular areas, and low-income consumers on the basis of its interstate and international end-user telecommunications revenues. Entities providing OVS, cable leased access, or DBS services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

§ 54.708 *De minimis* Exemption.

24. Add a new section 54.708 to read as follows:

§ 54.708 *De minimis* Exemption.

If a contributor's contribution to universal service in any given year is less than $10,000, that contributor will not be required to submit a contribution or Universal Service Worksheet for that year. If a contributor improperly claims exemption from the contribution requirement, it will be subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

§ 54.709 Computations of required contributions to universal service support mechanisms.

25. Remove the words "Administrator's, the Schools and Libraries Corporation's, and the Rural Health Care Corporation's" from paragraph (a)(2) and add, in their place, the word "Administrator's"; revise subsection 54.709(a)(3) to read as follows:

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(3) Total projected expenses for universal service support programs for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factors and individual contribution. For each quarter, the Administrator must submit its projections of demand for the high cost and low-income support mechanisms, the schools and libraries support mechanism, and the rural health care support mechanism, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program and the basis for those projections to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Universal Service Worksheets, the Administrator must submit the total contribution bases to the Common Carrier Bureau at least sixty (60) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice. If the Commission takes no action within fourteen (14) days of the date of release of the public notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and contribution factors shall be deemed approved by the Commission. Once the projections and contribution factors are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

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§ 54.711 Contributor reporting requirements.

26. Remove the words "Administrator, Rural Health Care Corporation and Schools and Libraries Corporation" from paragraph (b) and add, in their place, the word "Administrator."

§ 54.715 Administrator's functions.

27. Remove section 54.715.

§ 54.715 Administrative expenses of the Administrator.

28. Add a new section 54.715 to read as follows:

§ 54.715 Administrative expenses of the Administrator.

(a) The annual administrative expenses of the Administrator should be commensurate with the administrative expenses of programs of similar size, with the exception of the salary levels for officers and employees of the Administrator described in paragraph (c) of this section. The annual administrative expenses may include, but are not limited to, salaries of officers and operations personnel, the costs of borrowing funds, equipment costs, operating expenses, directors' expenses, and costs associated with auditing contributors of support recipients.

(b) All officers and employees of the Administrator may be compensated at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, in an amount not to exceed the rate of basic pay in effect for Level I of the Executive Schedule under section 5312 of title 5 of the United States Code.

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903.

§ 54.717 Audits of the Administrator.

29. Add a new section 54.717 to read as follows:

§ 54.717 Audits of the Administrator.

The Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things,

whether the Administrator is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the Administrator shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Common Carrier Bureau Audit Staff.

(b) The Common Carrier Bureau Audit Staff shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Common Carrier Bureau Audit Staff shall prescribe modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Common Carrier Bureau Audit Staff, the Administrator shall engage within thirty (30) calendar days an independent auditor to conduct the annual audit required by this subsection. In making its selection, the Administrator shall not engage any independent auditor who has been involved in designing any of the accounting or reporting systems under review in the audit.

(d) The independent auditor selected by the Administrator to conduct the annual audit shall be instructed by the Administrator to develop a detailed audit program based on the final audit requirements and shall be instructed by the Administrator to submit the audit program to the Common Carrier Bureau Audit Staff. The Common Carrier Bureau Audit Staff shall review the audit program and make modifications, as needed, that shall be incorporated into the final audit program. During the course of the audit, the Common Carrier Bureau Audit Staff may direct the Administrator to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements.

(e) During the course of the audit, the Administrator shall instruct the independent auditor to:

(1) Inform the Common Carrier Bureau Audit Staff of any revisions to the final audit program or to the scope of the audit;

(2) Notify the Common Carrier Bureau Audit Staff of any meetings with the Administrator in which audit findings are discussed;

(3) Submit to the Chief of the Common Carrier Bureau any accounting or rule interpretations necessary to complete the audit.

(f) Within sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Common Carrier Bureau Audit Staff.

(g) The Common Carrier Bureau Audit Staff shall review the audit findings and audit workpapers and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Common Carrier Bureau Audit Staff to the findings and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(h) Within fifteen (15) calendar days after receiving the Common Carrier Bureau Audit Staff's recommendations and making any revisions to the audit report, the Administrator shall instruct the independent auditor to submit the audit report to the Administrator for its response to the audit findings. At this time the auditor also must send copies of its audit findings to

the Common Carrier Bureau Audit Staff. The Administrator shall provide the independent auditor time to perform additional audit work recommended by the Common Carrier Bureau Audit Staff.

(i) Within thirty (30) calendar days after receiving the audit report, the Administrator shall respond to the audit findings and send copies of its response to the Common Carrier Bureau Audit Staff. The Administrator shall instruct the independent auditor that any reply that the independent auditor wishes to make to the Administrator's responses shall be sent to the Common Carrier Bureau Audit Staff as well as the Administrator. The Administrator's response and the independent auditor's replies shall be included in the final audit report;

(j) Within ten (10) calendar days after receiving the response of the Administrator, the independent auditor shall file with the Commission the final audit report.

(k) Based on the final audit report, the Chief of the Common Carrier Bureau may take any action necessary to ensure that the universal service support mechanisms operate in a manner consistent with the requirements of this Part, as well as such other action as is deemed necessary and in the public interest.

SUBPART I - REVIEW OF DECISIONS ISSUED BY THE ADMINISTRATOR

30. Add a subpart "I" to Part 54 of Title 47 of the Code of Federal Regulations as follows:

54.719	Parties permitted to seek review of Administrator decisions.
54.720	Filing deadlines.
54.721	General filing requirements.
54.722	Review by the Common Carrier Bureau or the Commission.
54.723	Standard of review.
54.724	Time Periods for Commission approval of Administrator decisions.
54.725	Universal service disbursement during pendency of a request for review of an Administrator decision.

§ 54.719 Parties permitted to seek review of Administrator decisions.

31. Add a new section 54.719 to read as follows:

§ 54.719 Parties permitted to seek review of Administrator decisions.

(a) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), may seek review from the appropriate Committee of the Board, as defined in § 54.705.

(b) Any person aggrieved by an action taken by the Administrator pertaining to a billing, collection or disbursement matter that falls outside the jurisdiction of the Committees of the

Board may seek review from the Board of Directors of the Administrator, as defined in § 54.703.

(c) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), a Committee of the Board of the Administrator, as defined in § 54.705, or the Board of Directors of the Administrator, as defined in § 54.703, may seek review from the Federal Communications Commission, as set forth in § 54.722.

§ 54.720 Filing deadlines.

32. Add a new section 54.720 to read as follows:

§ 54.720 Filing deadlines.

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to § 54.719(c) of this Part, shall file such request within thirty (30) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a) of this Part shall file such request within thirty (30) days of issuance of the decision by the division.

(c) An affected party requesting review by the Board of Directors pursuant to § 54.719(b) regarding a billing, collection, or disbursement matter that falls outside the jurisdiction of the Committees of the Board shall file such request within thirty (30) days of issuance of the Administrator's decision.

(d) The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.703, shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board or the full Board shall have thirty (30) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

(e) Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 CFR 1.45.

§ 54.721 General filing requirements.

33. Add a new section 54.721 to read as follows:

§ 54.721 General filing requirements

(a) Except as otherwise provided herein, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in Part 1 of the Federal Communications Commission's rules, 47 CFR 1. The request for review shall be captioned "In the matter of: Request for Review by [name of party seeking review] of Decision of Universal Service Administrator" and shall reference FCC Docket Nos. 97-21 and 96-45.

(b) A request for review pursuant to § 54.719(a)-(c) shall contain: (i) a statement setting forth the party's interest in the matter presented for review; (ii) a full statement of relevant, material facts with supporting affidavits and documentation; (iii) the question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; (iv) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(c) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in 47 CFR § 1.47.

(d) If a request for review filed pursuant to 47 C.F.R. § 54.720(a)-(c) alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in 47 CFR 1.47. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in 47 CFR 1.45 and the requirement for service of documents set forth in 47 CFR 1.47.

§ 54.722 Review by the Common Carrier Bureau or the Commission.

34. Add a new section 54.722 to read as follows:

§ 54.722 Review by the Common Carrier Bureau or the Commission.

(a) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Common Carrier; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(b) An affected party may seek review of a decision issued under delegated authority by the

Common Carrier Bureau pursuant to the rules set forth in Part 1 of the Commission's rules, 47 CFR 1.

§ 54.723 Standard of review.

35. Add a new section 54.723 to read as follows:

§ 54.723 Standard of review.

(a) The Common Carrier Bureau shall conduct *de novo* review of requests for review of decisions issued by the Administrator.

(b) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Common Carrier Bureau under delegated authority.

§ 54.724 Time Periods for Commission approval of Administrator decisions.

36. Add a new section 54.724 to read as follows:

§ 54.724 Time Periods for Commission approval of Administrator decisions.

(a) If the Common Carrier Bureau does not take action within ninety (90) days upon appeals that are properly before it, a decision issued by the Administrator shall be deemed approved; provided, however, that within the 90-day period, the Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law or policy within ninety (90) days; provided, however, that the Commission may extend the time period for taking action on the request for review.

§ 54.725 Universal service disbursements during pendency of a request for review of an Administrator decision.

37. Add a new section 74.725 to read as follows.

§ 54.725 Universal service disbursements during pendency of a request for review of an Administrator decision.

(a) When a party has sought review of an Administrator decision under § 54.719(a)-(c) in

connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission.

(b) When a party has sought review of an Administrator decision under § 54.719(a)-(c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission.

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 69 -- ACCESS CHARGES

§ 69.600 Definitions.

38. Remove section 69.600.

§ 69.603 Association functions.

39. Remove paragraphs (c), (d), and (e) of section 69.603.

§ 69.613 Temporary administrator of universal service support mechanisms.

40. Remove section 69.613.

§ 69.614 Independent subsidiary Board of Directors.

41. Remove section 69.614.

§ 69.615 High Cost and Low Income Committee.

42. Remove section 69.615.

§ 69.616 Independent subsidiary functions.

43. Remove section 69.616.

§ 69.617 Schools and Libraries Corporation and Rural Health Care Corporation.

44. Remove section 69.617.

§ 69.618 Rural Health Care Corporation functions.

45. Remove section 69.618.

§ 69.619 Schools and Libraries Corporation functions.

46. Remove section 69.619.

§ 69.620 Administrative expenses of independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation.

47. Remove section 69.620.

§ 69.621 Audits of independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation.

48. Remove section 69.621.

§ 69.622 Transition to the permanent Administrator.

49. Remove section 69.622.

Appendix B

PARTIES FILING COMMENTS ON USAC PLAN OF REORGANIZATION
CC Docket Nos. 97-21, 96-45
DA 98-1336
8/5/98

Commenter	Abbreviation
American Library Association	ALA
Ameritech	
Bell Atlantic	
BellSouth Corporation	BellSouth
Blooston, Mordofsky, Jackson & Dickens	
Commonwealth of Virginia	Virginia
Florida Department of Management Services	Florida DMS
GTE Service Corporation	GTE
Intermedia Communications, Inc.	Intermedia
MCI Telecommunications Corporation	MCI
National Association of Community Health Center	NACHC
National Exchange Carrier Association, Inc.	NECA
National Telephone Cooperative Association	NTCA
Pennsylvania Public Utility Commission	PaPUC
Rural Health Care Corporation	RHCC
SBC Communications, Inc.	SBC
Sprint Corporation	Sprint
Universal Service Administrative Company and the Schools and Libraries Corporation	USAC and SLC
US West Communications, Inc.	US West
Vermont Public Service Board	Vermont PSB
Weisiger, Greg	

CORRESPONDENCE AND EX PARTE PRESENTATIONS ON USAC PLAN OF REORGANIZATION
CC Docket Nos. 97-21, 96-45
DA 98-1336

Commenter	Abbreviation
Affiliated Health Valley Services	
University of Alabama	
Allegheny University Hospitals	
American Academy of Family Physicians	
American Academy of Physician Assistants	
American Board of Family Practice	
American Hospital Association	
American Psychological Association	
Arizona Telemedicine Program	
Association of Telemedicine Service Providers	ATSP
The University of Arizona Health Sciences Center	
Barnes Kasson County Hospital	
Bi-State Primary Care Association	BSPCA
Buffalo Hospital	
California Telehealth & Telemedicine Center	
Carle Foundation	
Center for Telemedicine Law	CTL
Charles Drew Health Center, Inc.	
Colusa Community Hospital	
The Honorable Susan M. Collins	
The Honorable Kent Conrad	
Crawford Memorial Hospital	
Cross Timbers Health Clinics, Inc.	
Cuero Community Hospital	
The Honorable Thomas Daschle	
Department of Health & Human Services	
The Honorable Pete V. Domenici	
Eastern Montana Telemedicine Network	
Faulk County Healthcare Network	
Georgia Department of Human Resources	
Goodall-Witcher Healthcare Foundation	
James B. Haggin Memorial Hospital	
HELP Innovations, Inc.,	
Illinois Department of Public Health	

Illinois Hospital & HealthSystems Association
Jasper Memorial Hospital
Kitsap Community Health Centers
Laurel Health System
Louisiana Primary Care Association, Inc.
MHA
Maine Rural Health Association
Memorial Medical Center
MeritCare Clinic
Michigan Center for Rural Health
Michigan Primary Care Association
Midwest Rural Telemedicine Consortium
Montana Healthcare Telecommunications Alliance
Montana Office of Rural Health
REACH Montana Telemedicine Network
Morton General Hospital
National Association of County and City Health Officials NACCHO
National Association of Community Health Centers, Inc. NACHC
National Grange of the Order of Patrons of Husbandry
National Organization of State Offices of Rural Health NOSORH
National Rural Development Partnership NRDP
National Rural Health Association NRHA
Nebraska Association of Hospitals & Health Systems
Public Health Foundation
University of Nevada School of Medicine
New Mexico Health Resources, Inc. NMHR
New Mexico Primary Care Association
New Mexico Rural Development Response Council
Community Health Care Association of New York State CHCANYS
The Honorable Jim Turner
Healthcare Association of New York State HANYS
North Carolina Board of Science and Technology, Office of the Governor
Northern Arizona Regional Behavioral Health Authority NARBHA
University of North Dakota School of Medicine
Health Sciences & University of North Dakota
Center for Rural Health
The Honorable Jim Nussle
PCS Health Center
Pennsylvania Office of Rural Health
Perry Memorial Hospital
The Honorable Glenn Poshard

RealWorld Advanced Technology Inc.	
Republic County Hospital	
The Honorable Pat Roberts	
Rural Health Association of Tennessee	
Rural Telecommunications Task Force	RTTF
Samaritan Healthcare	
Secretary of Health & Human Services	
Shenandoah Memorial Hospital	
St. Joseph Health System	
St. Mary's Family Practice Residency	
South Carolina State Office of Rural Health	
Union Hospital	
Central Utah Public Health Department	
VideoLink of St. Peter's	
Wallace Thomson Hospital	
Western Michigan University	
West Virginia School of Osteopathic Medicine	

DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Changes to the Board of Directors of the National Exchange Carrier Association, Inc; Federal-State Joint Board on Universal Service; (CC Docket Nos 97-21, 96-45) .

I dissent from today's order reorganizing the universal service corporate structure. While consolidating the three corporations into one is a good first step in reaching a more rational and efficient structure to administer universal service, I have reservations about the details of today's plan, including the specific functions of the consolidated entity and the procedures for Commission oversight. I fear that the consolidated organization retains an overly bureaucratic structure that artificially binds the USAC Board of Directors to decisions made by the programming committees and has insufficient supervision from the FCC.

Section 2005(b)(2)(A) of Senate Bill 1768, which prompted these revisions, provides for an extremely limited administrative entity:

> [T]he entity proposed by the Commission to administer the programs -- (i) is limited to implementation of the FCC rules for applications for discounts and processing the applications necessary to determine eligibility for discounts under section 254(h) of the Communications ct of 1934 (47 U.S.C. 254(h)) as determined by the Commission; (ii) may not administer the program in any manner that requires that entity to interpret the intent of Congress in establishing the programs or interpret any rule promulgated by the Commission in carrying out the programs, without appropriate consultation and guidance from the Commission.

In light of such limited administrative functions, I fail to see the need for the bureaucratic structure adopted today, with its formal divisions and multiple committees overseeing them. Even more importantly, I fail to understand the importance of allowing an oversight committee to *overrule* a majority of the USAC Board. If the overall entity is prohibited from setting policy and limited to the function of processing applications, then any subcommittee must be similarly constrained. But what kinds of decisions will any subcommittee be making that would be of such paramount interest to the program that it would be necessary to bind the full USAC board absent a supermajority?

In establishing an entity to review and process the applications, the Commission is merely contracting out administrative functions. All decisions regarding where the money should be going and how it should be distributed should -- indeed *must* -- be made by the

Commission. I am concerned, however, that the Commission itself is insufficiently involved in the decision-making process under this plan. For example, an affected party would file a petition for review first with the Common Carrier Bureau, who would have specific delegated authority to rule on the petitions with possible appeal to the full Commission. Moreover, this process allows for Bureau approval of USAC decisions without even an order explaining their reasoning if the Bureau fails to act within 90 days.. I would prefer that the full Commission be more actively involved in overseeing the administration of these new programs.

My concerns regarding appropriate Commission oversight are heightened by the limitations placed on the USAC Board. First, the proposed committees of USAC would have the power to bind the USAC Board regarding matters within their expertise, absent a supermajority of the full USAC Board voting to override the committee's actions. Second, the USAC Board is prohibited form modifying the power or authority of these committees without Commission approval. This structure is of special concern for the Schools and Libraries Committee where, unlike the Rural Health Care Committee, a majority of the committee members are themselves recipients. Matters within the Schools and Libraries Committee's expertise, for example, include "the development and implementation of other distinctive functions." I cannot endorse such open-ended authority for a decision-making body comprised mostly of beneficiaries, especially in light of the protracted procedure for Commission review.

I believe that the full Commission should take a more active role in the direct oversight of these quasi-public companies. Congress clearly favors a more efficient organization of only limited administrative functions, without the ability to "interpret the intent of Congress" or "any rule promulgated by the Commission."[222] While a good start, today's plan fails to ensure meaningful and early Commission involvement in budgetary decisions and the policy-making process.[223]

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[222] Section 2005(b) of Senate Bill 1768.

[223] For example, I am concerned about the degree of oversight that is being exercised regarding administrative and start-up costs. In their latest filing, the Schools and Libraries Corporation indicates that it paid NECA $3.9 million in operating costs, more than $1.2 million over the original estimate, and its actual expenses were $6.9 million, more than $2.7 million over the original estimate for its administrative costs for the second quarter. First Quarter 1999 Program Size Projections for the Schools and Libraries Universal Service Program, dated November 2, 1998.

Finally, I remain concerned that the report fails to address fully the issues raised by the GAO report regarding the legality of the Commission creating any new corporations without specific statutory authority. After GAO's conclusions regarding the illegality of establishing corporations without specific authorization, I fail to see how the Commission can direct that even a single corporation continue to act without first receiving the requisite authorization from Congress.